

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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3 DAVINO WATSON,

4 PLAINTIFF,

5 versus

14 CV 6459 (JBW)

6 UNITED STATES OF AMERICA, ET AL.,

7 DEFENDANTS.

U.S. Courthouse  
225 Cadman Plaza East  
8 Brooklyn, New York  
September 28th, 2015  
10:00 AM

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10 CIVIL CAUSE FOR BENCH TRIAL

11 BEFORE THE HONORABLE JACK WEINSTEIN

12 UNITED STATES DISTRICT JUDGE

13  
14 APPEARANCES

15  
16 Attorneys for Plaintiff:

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21 Court Reporter:

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1 THE COURT: Good morning, everybody.

2 MR. MARUTOLLO: Good morning.

3 MR. FLESSNER: Good morning.

4 THE COURT: Sit down, please.

5 THE CLERK: Civil cause for a trial, Watson versus  
6 USA.

7 Counsel, note your appearances, please, for the  
8 plaintiff.

9 MR. FLESSNER: Good morning. My name is Mark  
10 Flessner. I'm a partner of Holland and Knight. And here's my  
11 team. This is the plaintiff, Davino Watson. And my partner,  
12 Bob Burns, from the Holland, Knight office in Chicago. This  
13 is Mark Fleming from the National Immigrant Justice Center,  
14 and this is our associate, Tiana Stephens, from Holland and  
15 Knight.

16 THE COURT: Good morning, everybody.

17 MR. FLESSNER: Good morning.

18 THE CLERK: For the defendant?

19 MR. MARUTOLLO: Joseph Marutollo for the United  
20 States, Your Honor. Good morning.

21 THE COURT: Good morning.

22 MR. CHO: Good morning, Your Honor. James Cho with  
23 the U. S. Attorney's Office, and I'm here with my paralegal,  
24 Jill Merenda.

25 THE COURT: All right. Are there any applications

1 before we commence the trial?

2 MR. FLESSNER: (Shakes head negatively).

3 MR. MARUTOLLO: No, Your Honor.

4 MR. FLESSNER: No, Your Honor.

5 THE COURT: Over the weekend, I wrote an opinion in  
6 this case, and I finished it over the weekend. I'll have it  
7 typed up today and tomorrow, so you'll get my views on the  
8 Motion for Summary Judgment.

9 I think it probably would be helpful to have  
10 openings. Now why don't we proceed?

11 MR. FLESSNER: Would you like me to stand at the  
12 podium or just --

13 THE COURT: Wherever you're comfortable. I'm  
14 perfectly happy to have you sit.

15 MR. FLESSNER: I'll stand.

16 THE COURT: All right.

17 MR. FLESSNER: If that's okay.

18 THE COURT: All right.

19 MR. FLESSNER: Good morning. Thank you, Your Honor.

20 The evidence in this case is going to demonstrate  
21 first and foremost that plaintiff, Davino Watson, became a  
22 U. S. citizen on September 17th, 2002, through his father's  
23 naturalization on that day. Ironically, that is a fact that  
24 that government has refused to stipulate to, even though the  
25 court system of the United States has determined, the BIA and

1 the court system, has determined that on that date, the  
2 plaintiff became a United States citizen.

3 Plaintiff became a citizen --

4 THE COURT: Excuse me. The court system?

5 MR. FLESSNER: Yes.

6 THE COURT: The Second Circuit Court of Appeals, I  
7 thought, remanded this and the decision was then made  
8 administratively.

9 MR. FLESSNER: It's the Board of Immigration Appeals  
10 made that determination. So the court system within the  
11 Department of Justice -- or Homeland Security, Board of  
12 Immigration Appeals has determined he became a citizen on  
13 September 17th, 2002, even though the government refuses to  
14 stipulate to that fact.

15 THE COURT: I understand, but that was not an  
16 Article III court?

17 MR. FLESSNER: No, no.

18 THE COURT: That was an administrative court?

19 MR. FLESSNER: Yes. You're correct. It was an  
20 administrative court. I mean, obviously, the Second Circuit  
21 doesn't have the authority to make that determination.

22 THE COURT: All right.

23 MR. FLESSNER: The plaintiff became a U. S. citizen  
24 five years before the BIA published this case that the  
25 defendants have relied on consistently throughout the

1 discovery in this the case, *The Matter of Hines*. *The Matter*  
2 *of Hines* is the authority which they claim gave them the  
3 authority to detain and to place the plaintiff in removal  
4 proceedings, even though *The Matter of Hines* was determined  
5 approximately five weeks after the initiated removal  
6 proceedings, and arrested the plaintiff.

7 So in other words, they arrested him, put him in  
8 removal proceedings and then realized that they had made a  
9 mistake, so they -- a case came down from the BIA and they  
10 decided to post hoc to rely on that case to justify their  
11 error.

12 On October 9th of 2007, an Immigration and Custom  
13 Enforcement Deportation Officer named Erik Andren, who will  
14 testify, interviewed the defendant while he was in custody by  
15 the state of New York. After his interview with the  
16 plaintiff, Officer Andren did not prepare an Immigration  
17 Detainer, an arrest warrant or a Notice to Appeal.

18 ICE ordered plaintiff's alien file, which was  
19 received by ICE on November 1st of 2007. Plaintiff's Record  
20 of Deportable Alien provides plaintiff's parents' telephone  
21 number; however, there is no written record that plaintiff's  
22 parents from ever contacted.

23 The plaintiff --

24 THE COURT: He was at that time what age?

25 MR. FLESSNER: He was at the time in -- he was born

1       in 1984, so in -- he would have been -- 2008, he would have  
2       been 24.

3                     THE COURT: With a high school education?

4                     MR. FLESSNER: No, he did not have a high school  
5       education at the time. He only had an 11th grade education.  
6       He did not receive his GED until 2013.

7                     THE COURT: All right. I misunderstood that. I  
8       thought he had a high school education.

9                     MR. FLESSNER: He has an equivalency now, which he  
10      received two years ago.

11                  THE COURT: It's different from a high school  
12      education.

13                  MR. FLESSNER: Correct.

14                  THE COURT: It's an equivalent.

15                  MR. FLESSNER: Correct.

16                  THE COURT: And he received the GED when?

17                  MR. FLESSNER: 2013.

18                  THE COURT: So he went through the 11th grade?

19                  MR. FLESSNER: Correct.

20                  THE COURT: And why did he drop out of school?

21                  MR. FLESSNER: I think the plaintiff's adjustment to  
22      the United States from 2002 was a difficult one.

23                  THE COURT: Was all his education in the United  
24      States?

25                  MR. FLESSNER: He came here at the age of 13. So he

1 was educated up to the age of 13 in Jamaica and then from 13  
2 to 17, in the United States for four years.

3 THE COURT: Okay. Thank you.

4 MR. FLESSNER: Sure.

5 Plaintiff's Alien File contained a copy of the New  
6 York City Department of Probation's Pre-sentence Investigation  
7 Report, which reports that plaintiff was -- as having been  
8 born in Jamaica, but he was designated. So the report  
9 designated him as a U. S. citizen and that was in his Alien  
10 File, which the ICE officers obtained.

11 THE COURT: That was a report of ICE?

12 MR. FLESSNER: No, no. Plaintiff had some -- a  
13 couple of criminal -- minor criminal convictions.

14 THE COURT: I understand that.

15 MR. FLESSNER: And there was a Pre-sentence  
16 Investigation Report which was in his Alien File.

17 THE COURT: I see.

18 MR. FLESSNER: And in that Pre-sentence  
19 Investigation Report, it identified him as a United States  
20 citizen.

21 THE COURT: That's of little probative force.

22 MR. FLESSNER: I'm sorry?

23 THE COURT: That seems to me of little probative  
24 force.

25 MR. FLESSNER: Well, it's not -- if ICE --

1                   THE COURT: But it was enough to alert?

2                   MR. FLESSNER: Sure.

3                   THE COURT: Yes.

4                   MR. FLESSNER: Sure. Well, that official report and  
5 the fact that he continually claims to be a U.S. citizen.

6                   In April of 2008, ICE official, Deportation Officer  
7 Juan Estrada, who will also testify, conducted a cursory  
8 investigation to whether plaintiff was removable from the  
9 United States. Officer Estrada reviewed the immigration file  
10 of Hopeton Livingston Watson, and claimed to have found no  
11 record of plaintiff's father's nationalization.

12                  Officer Estrada never verified whether or not  
13 Hopeton Livingston Watson was indeed plaintiff's father,  
14 because he was not. The ICE officer reviewed the Alien File  
15 of Hopeton Livingston Watson, who is not plaintiff's father,  
16 and concluded that plaintiff was not a derivative citizen;  
17 however, plaintiff's father's name is Hopeton Rolando Watson,  
18 with Alien Number A041458063. That is the plaintiff's father.  
19 The Hopeton Livingston Watson has an Alien Number of  
20 A4757170.

21                  Plaintiff's father's file contained a copy of his  
22 Certificate of U. S. Citizenship. Plaintiff's father's Alien  
23 File also contained a copy of the approved application for  
24 naturalization, which listed plaintiff, Mr. Watson, as being  
25 in his father's custody and living with his father.

1 THE COURT: Now, what's the date of that?

2 MR. FLESSNER: The date of the --

3 THE COURT: The report you just talked about?

4 MR. FLESSNER: The date that Mister -- his father  
5 became a U. S. citizen?

6 THE COURT: No, the date this document was created.

7 MR. FLESSNER: The date that Certificate of  
8 Naturalization was created was September 17th of 2002.

9 THE COURT: Of the father?

10 MR. FLESSNER: I'm discussing what was in the  
11 plaintiff's father's Alien File.

12 THE COURT: I see.

13 MR. FLESSNER: What they did initially is they  
14 looked at the wrong Hopeton Watson.

15 THE COURT: But when was that document created that  
16 you're now referring to?

17 MR. FLESSNER: It's our Exhibit 53. I can tell you  
18 that in just two seconds. (Perusing documents.)

19 That's the certificate -- it's the September 17th,  
20 '02.

21 THE COURT: '02?

22 MR. FLESSNER: Yes.

23 THE COURT: So they had that document in their files  
24 --

25 MR. FLESSNER: Yes.

1 THE COURT: -- in '02.

2 MR. FLESSNER: Correct. August of 2002 was when the  
3 application was approved. It was approved August of 2002 and  
4 it was issued in September of 2002. So it's six years prior  
5 to his detention.

6 THE COURT: All right. Thank you.

7 MR. FLESSNER: Plaintiff's father's Alien File, the  
8 correct Alien File, also contained a screen shot from the  
9 Central Index System that's called the CIS. It's the  
10 electronic database showing that Hopeton Watson naturalized to  
11 U. S. citizenship on September 2nd, 2002.

12 Had Officer Estrada reviewed plaintiff's A File or  
13 the CIS database, he would have discovered that plaintiff's  
14 father's Certificate of Naturalization was approved and the  
15 naturalization application listing plaintiff as his descendant  
16 living with him and the CIS database entry showing the  
17 father's date of naturalization.

18 THE COURT: Now, when that was issued, how old was  
19 the plaintiff? This is 2002.

20 MR. FLESSNER: In 2002, the plaintiff was 17.

21 THE COURT: He was still a minor?

22 MR. FLESSNER: He was still a minor, and he had to  
23 be under the age of 18, which he was.

24 THE COURT: Yes. Is there any indication of the  
25 relationship of the father to the son with respect to living

1 together?

2 MR. FLESSNER: Yes, that's in the father's A File.

3 THE COURT: Says they were living together.

4 MR. FLESSNER: Yes. He was in his -- he was --

5 plaintiff was in his father's custody, and he was living with  
6 his father.

7 THE COURT: Okay.

8 MR. FLESSNER: Officer Estrada never spoke with the  
9 plaintiff or his father as part of his investigation. There's  
10 no written record that Officer Estrada talked with the  
11 previous officer who interviewed the plaintiff, Officer  
12 Andren.

13 On or about April 7th of 2008, Officer Estrada  
14 issued what is known as the Form I-247, the Immigration  
15 Detainer Notice of Action, to the Lakeview Correctional  
16 Center, where the plaintiff was living, and they issued it in  
17 the name of Davino Watson.

18 On the immigration detainer, Officer Estrada checked  
19 the box for federal -- "By federal regulation, require that  
20 you detain the alien for a period not to exceed 48 hours, to  
21 provide adequate time for DHS to assume custody of the alien."

22 The immigration detainer was not supported by a  
23 sworn statement or probable cause. The immigration detainer  
24 also was not approved by an immigration judge or any other  
25 judge, for that matter.

1                   On or around April 10th of --

2                   THE COURT: Well, does the detainer have to be  
3 approved by a judge?

4                   MR. FLESSNER: No.

5                   THE COURT: Administrative or otherwise?

6                   MR. FLESSNER: They claim at the time that it was  
7 not reviewable by a judge. It was not reviewable by an  
8 immigration judge or any other Article III judge, that it was  
9 an automatic detention based on the Immigration and  
10 Naturalization Act. Our point is that there was no finding of  
11 probable cause at any point during Mr. Watson's detention.

12                  THE COURT: But it didn't under the law have to be  
13 reviewed, did it?

14                  MR. FLESSNER: (No response.)

15                  THE COURT: The detainer?

16                  MR. FLESSNER: It didn't have to be reviewed if  
17 indeed he was an alien, but the fact that he was a United  
18 States citizen at this time, it should have been reviewed.

19                  THE COURT: Yes.

20                  MR. FLESSNER: On or around April 10th, 2008, the  
21 supervising deportation officer, Michael "Miguel" Ortiz, who  
22 also will testify, executed a warrant for arrest of alien, a  
23 Notice to Appear and charging document for removal  
24 proceedings.

25                  Ortiz did not seek judicial approval for the arrest

1 or custody. The warrant of arrest was not supported by a  
2 sworn statement of probable cause and the Warrant of Arrest  
3 was not approved by an immigration judge or any other judge.  
4 There's no written record that Ortiz's investigation or  
5 records reviewed the executing Warrant of Arrest for plaintiff  
6 on April 10th of 2008. There is also no written record that  
7 the Officer Ortiz instructed another deportation officer to  
8 speak with the plaintiff before executing the Warrant of  
9 Arrest. On --

10 THE COURT: Was that required by procedure?

11 MR. FLESSNER: It is not required, but when one is  
12 conducting such an investigation where someone is claiming  
13 citizenship and there's probative evidence that there is  
14 citizenship, it is our position that a more thorough  
15 investigation should have taken place.

16 THE COURT: I understand.

17 MR. FLESSNER: Supervisor Ortiz, he issued the  
18 Notice of Detention and Notice to Appear to the plaintiff on  
19 May 8th of 2008. In his statements to the -- his papers to  
20 the plaintiff and his custody determination held that,  
21 "Plaintiff shall be detained in the custody of the service,  
22 ICE, during removal proceedings," and he instructed the  
23 plaintiff, you, quote -- this is a quote -- you may not  
24 request review of this determination by an immigration judge  
25 because the Immigration and Nationality Act prohibit your

1 release from custody. In other words, he issued an order of  
2 mandatory detention without possibility of review.

3 On the Notice to Appear, Ortiz did not include the  
4 date and time --

5 THE COURT: Was there a possibility of review?

6 MR. FLESSNER: I'm sorry?

7 THE COURT: Was that accurate? Was there a  
8 possibility of review?

9 MR. FLESSNER: Again, if the officer -- the  
10 supervising officer and the two underlying investigative  
11 officers had accurately investigated his U.S. citizenship,  
12 they didn't have authority to issue that --

13 THE COURT: So it all turns on that finding?

14 MR. FLESSNER: The negligence --

15 THE COURT: The status?

16 MR. FLESSNER: Yes, their negligence, yes.

17 ICE officials placed plaintiff in removal  
18 proceedings, alleging he was not a United States citizen. At  
19 least one week before the BIA issued this opinion that the  
20 officials have all along throughout the years of this case  
21 relied him on, *Matter of Hines*. So it is the plaintiff's  
22 position that it is impossible that they made their  
23 determinations to arrest and detain him based on *The Matter of*  
24 *Hines* because that case did not even exist at the time they  
25 did so.

1 THE COURT: Yes.

2 MR. FLESSNER: And that's a post facto -- it's our  
3 position that's a post facto excuse to justify their illegal  
4 behavior.

5 Ortiz, however, didn't --

6 THE COURT: Well, did *Hines* itself indicate  
7 retroactivity?

8 MR. FLESSNER: No.

9 THE COURT: Okay.

10 MR. FLESSNER: It specifically did not. In fact, it  
11 is specifically post-active.

12 It is undisputed that the plaintiff was pro se until  
13 the Second Circuit sua sponte appointed counsel to represent  
14 plaintiff for his petition for review on July 27th, 2010.

15 THE COURT: Who was the then-chief judge? Do you  
16 remember?

17 MR. FLESSNER: Anybody knows who the chief judge was  
18 in 2010 for the Second Circuit?

19 I don't know that, Your Honor.

20 THE COURT: Well, it's not an irrelevant question,  
21 because Chief Judge Katzmann has made one of his primary  
22 efforts the obtaining of counsel for persons who are before  
23 that court. I don't know whether his efforts also included  
24 counsel. But for administrative judges, that's a different  
25 problem. But I believe he may have spoken more broadly.

1                   So the person who is the chief judge has an impact  
2 on this case. Who was the chief judge? One of you --

3                   MR. FLESSNER: We can probably figure that out while  
4 we're waiting.

5                   THE COURT: One of you who is adept at --

6                   MR. FLESSNER: Yes. I think that will be Ms.  
7 Stephens.

8                   THE COURT: -- using these iPads can tell us right  
9 away.

10                  MR. FLESSNER: All during this time of plaintiff's  
11 detention, ICE was issuing directives regarding what the  
12 officers -- what the deportation officers should do, the  
13 protocol of what they should do if someone in removal  
14 proceedings or a detainee is claiming United States  
15 citizenship.

16                  During this time, they issued four directives, on  
17 May 23rd, 2008, July 18th, 2008, November 6th, 2008, and  
18 November 19th, 2009. I'm going to refer to them as the USC  
19 directives, all four of them. It is our position that it was  
20 negligent for ICE officials not to follow the protocol of  
21 these four directives to -- when the plaintiff was  
22 repeatedly -- repeatedly making claims of U. S. citizenship.

23                  And the testimony that you will hear from the ICE  
24 agents and the field directors is that they did not follow the  
25 directives and they did not think it was necessary to follow

1 the directives during this time.

2                 The May 23rd directive instructed all officers  
3 encountering a detainee claiming U. S. citizenship shall  
4 immediately notify the field office director through the chain  
5 of command. It also states that the field officer director  
6 shall make appropriate notification to HQDR, Headquarters of  
7 Detention and Removal Operations. That did not happen in this  
8 case. Plaintiff made consistent and repeated claims of  
9 U. S. citizenship from the moment of his arrest. And the  
10 plaintiff had a copy of his father's naturalization  
11 certificate faxed to him at the Allegheny County jail within  
12 21 days of him being detained, and he gave it to the ICE  
13 officers. They took no action on that -- the Certificate of  
14 Citizenship.

15                 On June 26th, 2008, Deportation Officer Earl DeLong  
16 recorded in plaintiff's detainee request log, quote, needs to  
17 file an N-600, believes he's a derived United States citizen.  
18 So as at least of June 26th, there's written record to prove  
19 that ICE agents knew that the plaintiff was claiming that he  
20 was a USC.

21                 Officer DeLong noted the N-600 -- N-600 is an  
22 application to obtain the Certificate of Citizenship -- with  
23 instruction -- the N-600 was sent with instructions to the  
24 plaintiff on 6-26-08. There's no written record in the  
25 request log that Officer DeLong reported claims of U. S.

1 citizenship up the chain of command.

2                   And there's also no written record that -- in the --  
3 what is called the Alien Removal -- Enforce Alien Removal  
4 Module, EARM, for Davino Watson, that Officer DeLong reported  
5 plaintiff's claims of USC, U. S. citizenship up the chain of  
6 command.

7                   In a handwritten letter, the plaintiff, on July  
8 15th, 2008, the plaintiff wrote a handwritten letter to his  
9 deportation officer at the time, Timothy Gunther. He said, I  
10 would like you to send these documents including his father's  
11 Certificate of Naturalization with the N-600 application or  
12 send them to whatever you sent the N-600 form because I think  
13 it can help in my argument about being a citizen.

14                  There's no written record within the request log  
15 that Officer Gunther reported the plaintiff's claims of United  
16 States citizenship up the chain of command. There's also no  
17 record that ICE officials complied with the requirements to  
18 promptly report and investigate steps in any of the four USC  
19 directives until November 2nd of 2011, the day they finally  
20 released the plaintiff.

21                  Defendants' attempt to justify their unlawful and  
22 negligent actions by hiding behind the *Matter of Hines* is on  
23 its face absurd. *Matter of Hines* was decided five years after  
24 the plaintiff had become a United States -- more than five  
25 years after the plaintiff had become a U. S. citizenship, and

1 it was decided 27 days after the ICE officials arrested  
2 plaintiff and over a week after they initiated removal  
3 proceedings.

4 USCIS, the United States Citizen and Immigration  
5 Services, nevertheless denied plaintiff's N-600 application to  
6 receive a Certificate of Citizenship, and they subjected the  
7 plaintiff to removal -- to a removal order. In other words,  
8 they had ordered that he be removed from the United States,  
9 even though he was making a claim of citizenship.

10 While the plaintiff's Petition for Review was still  
11 pending in the Second Circuit, ICE officials repeatedly tried  
12 to deport the plaintiff to Jamaica, noting that the plaintiff  
13 faced a lifetime ban to ever return to the United States.

14 On October 1 of 2009, ICE officials logged into the  
15 EARM case log, quote, Davino Watson, subject will be removed  
16 via October's JATA flight. That's a DHS flight that they use  
17 to export -- deport people from the United States.

18 On November 19th of 2009, ICE officials issued the  
19 ICE Field Office Director Special Agent in Charge and Chief  
20 Counsel a directive entitled "Superseding Guidelines on  
21 Reporting and Investigating Claims of United States  
22 Citizenship." The November 19th directive states, quote, as a  
23 matter of law, ICE cannot assert civil and immigration  
24 enforcement authority to arrest and/or detain a United States  
25 citizen.

1                   The November 19th directive also instructed the  
2 field officers, if a person -- if an individual -- I'm going  
3 to quote it -- "If an individual already in custody claims to  
4 be a USC" -- which is the acronym for United States citizen --  
5 "an officer must immediately examine the merit of the claim  
6 and notify and consult with his or her local Office of Chief  
7 Counsel. If the individual is unrepresented, an officer must  
8 immediately provide the individual with local office -- with  
9 the Local Executive Office for Immigration Review and a list  
10 of pro bono services provided, even if one has already been  
11 provided."

12                  "The detention and removal" -- continuing the  
13 quotation from the directive -- "Detention Removal Operations,  
14 personnel and the Office of Principal Legal Advisor, OPLA,  
15 must jointly prepare and submit a memorandum explaining the  
16 claim and recommending a course of action to the Headquarters  
17 Assistant Director for Operations at the United States  
18 citizen's claim -- claims DRO, email box." So in other words,  
19 they have to send this memo within 24 hours to the mailbox and  
20 to headquarters, the Director of Field Operations.

21                  "Absent extraordinary circumstances, this memorandum  
22 should be submitted no more than 24 hours from the time the  
23 individual made the claim." And then the headquarters are  
24 instructed to make and respond to the -- make a recommendation  
25 about the citizenship within 24 hours.

1                   "A notation should be made in the EARM system and a  
2 copy of the memorandum and resulting decision should be placed  
3 in the A File. The memorandum and resulting decision should  
4 also be saved in the Electronic Management System of the  
5 General Counsel's Office, and notating the -- using the  
6 designated bar codes. If the individual's claim is credible  
7 on its face, the memorandum the directive orders or if the  
8 investigation results in probative evidence that the detained  
9 individual is a USC, the individual should be released from  
10 the detention." That did not happen until two years later.

11                  On May 31st of 2011, the Second Circuit remanded the  
12 plaintiff's case to the Board of Immigration Appeals. ICE  
13 maintained that the plaintiff remained in mandatory detention  
14 without the opportunity to review by an immigration judge or a  
15 federal court.

16                  On November 2nd, 2011, the Deputy Chief Counsel for  
17 ICE, Office of Chief Counsel located in Georgia, forwarded an  
18 email from USCIS to the ICE Deputy Chief Counsel for the  
19 Buffalo Office of Chief Counsel with the message, quote, USCIS  
20 has just received -- has just issued this determination, which  
21 is in agreement with their own brief. If so, Watson is a  
22 United States citizen.

23                  At that -- on that same date, the ICE Deputy Chief  
24 Counsel for Buffalo forwarded the email to the ICE Deputy  
25 Chief Counsel located in Georgia with the additional message:

1 "It seems like we need to get Watson out of DHS custody."

2           Later that day, the ICE Deputy Chief Counsel for the  
3 Buffalo Office sent an email to the OPLA USC Claims, with a  
4 subject line "Watson," and flagged its importance as high,  
5 quote, attached, please find the USC claim memo relating to  
6 Davino Watson.

7           While preparing the government's brief on remand in  
8 the BIA in the plaintiff's case, ICE, in consultation with the  
9 USCIS complied for the first time with the November 19th, 2009  
10 directive. So again, two years later, which was supposed to  
11 be done within 24 hours.

12           ICE and USCIS concluded that plaintiff was a U. S.  
13 citizen based on the law in effect at the time that he was --  
14 derived citizenship and at the time they arrested him, which  
15 is *The Matter of Clahar*, C-L-A-H-A-R.

16           In the memorandum to headquarters, ICE officials  
17 concluded, quote, following further discussion with OPLA HQ,  
18 USCIS counsel and DHSOGC, Office of General Counsel, it is  
19 concluded that Watson has provided probative evidence of  
20 United States citizenship based on *Clahar*. It is recommended  
21 that he be released from custody immediately.

22           Plaintiff was released on that same date. He had  
23 been detained at that time for 1,273 days. Nevertheless, on  
24 the date that the plaintiff -- that the ICE officials  
25 determined that the plaintiff was a United States citizen,

1 they did not seek to terminate his removal proceedings, and  
2 they filed a brief before the BIA just a few days later, on  
3 November 25th, 2011.

4 On the day that the plaintiff was released, the DHS  
5 computer log for Davino Watson includes the entry, "Per OPLA,  
6 Office of Legal Counsel, on 11-2-2011, subject was determined  
7 to derive U. S. citizenship. Subject was released."

8 So on November 2nd of 2002, ICE officials knew that  
9 he was a United States citizenship and they did nothing to  
10 terminate his removal proceedings, which went on for 14 more  
11 months and refused -- and USCIS refused to provide him with a  
12 Certificate of Citizenship.

13 In the brief that the government filed in November  
14 of 2011 before the BIA a few days after they released him, the  
15 government all but concedes that plaintiff is and was a United  
16 States citizen since September 17th of 2002. Quote, in  
17 terminating the proceedings, the BIA said, "On remand, the DHS  
18 concedes that the respondent has met the requirements of  
19 Section 320(a) of the INA and he was legitimated by his  
20 father's acknowledgment." In other words, he was legitimated  
21 as a United States citizen on September 17th, of 2002.

22 The DHS did not seek to terminate plaintiff's  
23 removal proceeding and filed this brief on the remand to the  
24 BIA. Although the BIA terminated the plaintiff's removal  
25 proceedings on January 24th of 2013, meaning, 14 months after

1 they determined he was United States citizen, they kept him in  
2 removal proceedings to try to remove him from the United  
3 States, which is on its face an oxymoron and absurd.

4 Furthermore, after the determination -- after the  
5 determination that he was -- the plaintiff was a United States  
6 citizen on November 2nd, 2011, USCIS, the officials who had  
7 denied him his Certificate of Citizenship, refused to issue or  
8 to correct its error in denying him a Certificate of  
9 Citizenship.

10 As part of ICE's November 2nd, 2011 review of the  
11 plaintiff's U. S. citizenship claim, USCIS independently  
12 concluded that the plaintiff was a U. S. citizenship, in  
13 contradiction of its earlier N-600 adjudication. Again,  
14 USCIS, however, did not nothing to correct its error until  
15 plaintiff sought to reopen the N-600 application.

16 USCIS denied plaintiff's attempts to replace his  
17 lawful Permanent Resident Card in order to have proof of his  
18 authorization to work legally in the United States, and USCIS  
19 did not issue plaintiff's Certificate of Citizenship until  
20 November 26th of 2013.

21 So from November 2nd of 2011, when USCIS and ICE  
22 determined that the plaintiff was a United States citizenship,  
23 it both kept him in removal proceedings for 14 months and then  
24 for another eight or ten months, refused to issue him a  
25 Certificate of Citizenship. So for 755 more days, the

1 plaintiff was left destitute, without the ability to work or  
2 get a job, to demonstrate to employers that he was in the  
3 country legally, which caused the plaintiff to become  
4 homeless, to spiral down, to have addiction problems, and to  
5 suffer from the trauma and depression that resulted from his  
6 three and-a-half year detention.

7 Furthermore, after even issuing plaintiff's  
8 Certificate of Citizenship in 2013, USCIS did not update its  
9 own computer index for yet another year, until December 2nd of  
10 2014, meaning that anybody who went in to look in the computer  
11 as to determine Mr. Watson's status, it would have shown that  
12 he was in the country illegally and that he was not a United  
13 States citizen.

14 THE COURT: Is that open to employers?

15 MR. FLESSNER: No. It's an internal DHS system.

16 THE COURT: So if an employer inquires, he wouldn't  
17 know that?

18 MR. FLESSNER: Well, an employer doesn't have access  
19 to that, but if he had been -- for any reason a law  
20 enforcement officer needs to check on his status and if they  
21 had checked, it would have shown --

22 THE COURT: It is open to law enforcement officers?

23 MR. FLESSNER: Yes. We allege in the complaint in  
24 this case, two theories of liability. The one is the false  
25 arrest and false imprisonment. That was the responsibility of

1 the Immigration and Custom Enforcement officers.

2 Under New York law, the preponderance of evidence  
3 standard applies to false arrest, false imprisonment claims.  
4 They are essentially false arrest, false imprisonment or  
5 essentially the elements are the same and they are treated the  
6 same legally.

7 The false arrest, false imprisonment claim is viable  
8 under the FTCA, because the FTCA explicitly permits the  
9 assertion of false arrest and false imprisonment claims based  
10 on the actions of federal law enforcement officers, 28 USC,  
11 2680(h).

12 The elements of false arrest, false imprisonment are  
13 the number one, the defendants intended to confine the  
14 plaintiff. That is an undisputed fact. Number two, the  
15 plaintiff was conscious of his confinement. That's also an  
16 undisputed fact. Three, that the plaintiff did not consent to  
17 the confinement. I think that's also an undisputed fact. And  
18 the confinement was not otherwise privileged.

19 There is no -- in the ICE detention of plaintiff,  
20 there's no privilege because plaintiff was a United States  
21 citizen, and ICE agents flagrantly failed to follow the rules  
22 and procedures of the ICE directives and protocols established  
23 by the INA and ICE's own policies.

24 Based on the evidence that we think that will be  
25 submitted during the trial, the Court should find that the

1 defendant injured the plaintiff by intentionally confining him  
 2 with his knowledge, without his consent, and with no legal  
 3 privilege to do so. Further, the defendants continued to  
 4 confine plaintiff when it knew or should have known that it a  
 5 U. S. citizen and not eligible for detention under the INA.

6 Our negligence theory under New York law, to  
 7 establish a cause of action sounding in negligence, a  
 8 plaintiff must establish the existence of a duty on  
 9 defendant's part to plaintiff, breach of that duty and  
 10 damages.

11 ICE owed plaintiff a duty to reasonably comply with  
 12 the four directives of U. S. citizenship, which requires  
 13 prompt reporting and investigation procedures in response to  
 14 plaintiff's repeated and continuous claims of citizenship  
 15 while he was in ICE detention. ICE breached its duty by  
 16 failing to properly report and investigated plaintiff's  
 17 assertions of U. S. citizenship in defiance of the four  
 18 directives until ICE finally complied with the procedures  
 19 under the directives and promptly released him on November  
 20 2nd, 2011, three and-a-half years after its original arrest,  
 21 even though it was directed to do so within 24 hours. As a  
 22 result of the ICE's breach of its duty to the plaintiff, he  
 23 was detained for 1,273 days.

24 With respect to the USCIS negligence, they owed  
 25 plaintiff a duty to reasonably correct their error in failing

1 issue the plaintiff's a Certificate of U. S. Citizenship in  
2 '08. When USCIS realized that that plaintiff was a U. S.  
3 citizen on November 2nd, 2011.

4           USCIS officials breached their duty of care to  
5 plaintiff when it realized that erred in denying the  
6 Certificate of Citizenship that failed to promptly correct  
7 that error and issue plaintiff a Certificate of Citizenship,  
8 and in fact, waited 755 days to do so.

9           As a result of the USCIS's breach of duty, plaintiff  
10 was left without proof of his U. S. citizenship and thus  
11 unable to legally work or exercise his rights as a United  
12 States citizen for an additional 755 days after his release  
13 from detention.

14           For all the foregoing reasons, we believe the Court  
15 should find that plaintiff has sufficiently stated a claim for  
16 false arrest, false imprisonment and negligence.

17           THE COURT: Well, I've finished the opinion on the  
18 Motion for Summary Judgment, as I indicated, over the weekend.  
19 That will take a day or two to type up --

20           MR. FLESSNER: Sure.

21           THE COURT: -- because it's extensive. It's based  
22 on somewhat different information than you're now presenting  
23 in your opening because it was a Motion for Summary Judgment  
24 backed up by affidavits and other information, and it's not  
25 fully congruent with what I assume the trial you expect will

1 show, correct?

2 So that I will and -- I have indicated that orally,  
3 I think, that I was denying the motion, with an opinion to  
4 follow.

5 MR. MARUTOLLO: Denying it in part, Your Honor.

6 THE COURT: In part. Yes. That's right. But the  
7 negligence claim clearly is going forward, based on my summary  
8 judgment opinion and oral decision, which you will have within  
9 a few days, as soon as it can be typed up and cite-checked.

10 Now, assuming that the gravamen of your complaint is  
11 negligence, which is clearly a tort, and within the  
12 contemplation, I suppose, of Congress when it enacted the  
13 Federal Tort Claims Act previously in deciding these cases on  
14 an individual basis, as you know, and it was designed to get  
15 all these negligence cases out of Congress and into the  
16 courts.

17 Now, I am going to try the case of liability and  
18 damages together, and I want to know what your claim is going  
19 to be for the 1,272 days, and for the 755 days, and how the  
20 Court will be expected to compute it. Will we look to cases  
21 from the New York Court of Claims on people who have been  
22 unjustly convicted or unjustly arrested? There have been a  
23 considerable number of them unfortunately in Brooklyn because  
24 of at least one detective's work, and those settlements in the  
25 main have run into the many millions of dollars, but they very

1 often involved longer periods, even than this.

2                   And there are the attempts, as you probably know, to  
3 look at various judgments and settlements to try to get some  
4 view. Are you going to treat this as if it were a  
5 imprisonment in a criminal prison?

6                   MR. FLESSNER: We actually have conducted a survey  
7 across the country, and we have a case out of the Eastern  
8 District of New York. It was actually a 1997 case, in which a  
9 jury awarded \$3,000 a day in what they called PDV, Per Day  
10 Value of incarceration.

11                  We did a present money value of that, \$3,000, say  
12 from 1997 to 2015. That came out to about \$4,600 a day.  
13 The -- multiplying that by the 1273 days plus 755 days, it's  
14 something in excess of \$9 million, but we can actually provide  
15 the Court with a survey -- a survey of around the country and  
16 specifically within New York.

17                  THE COURT: Well, isn't it the New York jury view  
18 that should prevail here?

19                  MR. FLESSNER: Well, that was the case I'm referring  
20 to.

21                  THE COURT: Is that the only case we have?

22                  MR. FLESSNER: That's the only immigration case,  
23 but there are other -- I'm not sure there's a distinction as  
24 to whether it's immigration or if it's -- why they're detained  
25 unconstitutionally. That case is *Hyatt v. United States*, 968

1 F. Supp. 96, EDNY 1997.

2 THE COURT: He was held, however, in a civilian  
3 proceeding, but he was held in a criminal facility, was he  
4 not?

5 MR. FLESSNER: Mr. Watson, yes, initially was held  
6 in the Allegheny County jail, then he was transferred to DHS,  
7 where -- a facility, but where they held criminal defendants.

8 THE COURT: So he was held in a criminal facility.

9 MR. FLESSNER: Essentially.

10 MR. MARUTOLLO: Your Honor, that's not accurate.

11 THE COURT: Well, I'm going to hear you, of course,  
12 but I think if you're right on the liability issue, then the  
13 damage issue is a critical one because as I understand it now,  
14 you're claiming 8 million, is that right?

15 MR. FLESSNER: Yeah. I mean, I can give you the  
16 numbers. It was something in excess of \$9 million.

17 THE COURT: Well, I don't care for the numbers  
18 particularly, but it is a very substantial case.

19 MR. FLESSNER: Yes.

20 THE COURT: And how you compute that without a  
21 jury -- when there's a jury here, it's not a big problem,  
22 except when they have very much too little obviously or very  
23 much too much obviously. But in a nonjury case with a judge  
24 alone, that's a problem.

25 You're not seeking punitive damages, I take it?

1 MR. FLESSNER: No, Your Honor.

2 THE COURT: There's no punitive damages, as I  
3 understand, against the United States?

4 MR. FLESSNER: No, we can't.

5 THE COURT: Now, of course one day way of dealing  
6 with the matter is to have an advisory jury on the issue of  
7 damages, if we should get to that now.

8 MR. FLESSNER: Your Honor --

9 THE COURT: Some years ago when I tried to case of  
10 the Post Office opening letters to Russian addressees, I think  
11 the damages were a thousand dollars per plaintiff, not per  
12 letter.

13 MR. FLESSNER: The *Hyatt* case was an FTCA case and  
14 it was not a jury trial.

15 THE COURT: It was a nonjury trial?

16 MR. FLESSNER: Yeah. I'm not sure who the judge  
17 was.

18 THE COURT: Me.

19 MR. FLESSNER: I'm sorry?

20 THE COURT: I think I was.

21 MR. FLESSNER: Okay. Well, that's some good  
22 authority.

23 THE COURT: I forget whether -- I think I used the  
24 advisory jury in that mail case.

25 Well, I think we have to consider in this case

1 possibly splitting the two, damages and liability. The  
2 evidence will be different from the evidence -- and that's the  
3 basis of my summary judgment opinion. You all understand  
4 that, right?

5 MR. MARUTOLLO: Yes, Your Honor. And also, our  
6 understanding based from our last conference was that  
7 liability and damages would be bifurcated. We would have a  
8 separate --

9 THE COURT: You want to have a separate trial?

10 MR. MARUTOLLO: Well, I think that was the  
11 understanding from the last conference.

12 THE COURT: I wasn't clear that I made that  
13 decision.

14 MR. MARUTOLLO: You did, Your Honor.

15 MR. FLESSNER: This is the liability phase.

16 THE COURT: I did make it?

17 MR. MARUTOLLO: You did, Your Honor.

18 THE COURT: I did? I thought it wasn't that clear  
19 cut, but if you say I did, I'm sure you're right.

20 (Continued on the next page.)

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25

1                    (In open court.)

2                    THE COURT: So I think you should be considering  
3 this advisory jury option for damages should you get to the  
4 point because it would be useful to know what the citizens of  
5 this area think the dangers should be. So will you give that  
6 some thought and get back to me while we're trying this case  
7 because I'm going to have to when is our next jury date.  
8 Would you ask June when our next jury duty is. All right.  
9 Thank you very much.

10                  MR. FLESSNER: You're welcome. Thank you.

11                  THE COURT: You're talking about the Johnson case  
12 now, my mail case?

13                  MR. MARUTOLLO: I believe the plaintiff is talking  
14 about Judge Johnson's case.

15                  THE COURT: That was Hyatt.

16                  MR. FLESSNER: Yes.

17                  THE COURT: Judge Johnson's case. Mine was a  
18 different case involving opening steaming love letters to a  
19 woman in Russia by a very rich love who pressed his case, and  
20 his wooing of the lady in this court.

21 Thank you.

22 October 5th is jury selection, would you be prepared to go?  
23 Think about it. I understand everybody has other obligations  
24 and the next one after that is two weeks, so give  
25 consideration and find out what our jury selection we'll have

1 to use a panel.

2 MR. FLESSNER: My wife's having surgery on  
3 October 5th so I can't be here that day.

4 THE COURT: I'm not sitting that day, I understand  
5 the problem, but we have to consider it. I'm going to call a  
6 jury off our general panel.

7 MR. FLESSNER: Okay.

8 THE COURT: If I do an advisory jury, and if I find  
9 liability, I would be inclined to do that. We have trial.

10 MR. MARUTOLLO: Your Honor, just to answer your  
11 question earlier, Dennis Jacobs was chief judge at that time.

12 THE COURT: Okay. Thank you.

13 MR. MARUTOLLO: Your Honor, at every phase of this  
14 case, during plaintiff's removal proceedings and with respect  
15 to his application for a Certificate of Citizenship, the  
16 Government acted reasonably and with due care. For this  
17 reason, plaintiff cannot establish the elements necessary to  
18 prove a claim for false imprisonment or negligence under the  
19 Federal Torts Claim Act.

20 First, plaintiff cannot establish the elements of false  
21 imprisonment because the Government's confinement of the  
22 plaintiff was legally privileged. As the Second Circuit has  
23 set forth, in the immigration context far less than probable  
24 cause is needed to detain a person.

25 Further, if a suspected alien is foreign born, this foreign

1 national bears the burden to prove that he is a U.S. citizen.

2 THE COURT: Just as an aside. When, in the  
3 plaintiff's submission, he became a United States citizen  
4 through his father's citizenship and custody, what happened to  
5 his Jamaican citizenship?

6 MR. MARUTOLLO: I'm not sure what happened to his  
7 Jamaican citizenship. He was originally a Jamaican citizen,  
8 he was born in Jamaica, and he was ultimately issued a  
9 Certificate of Citizenship from the United States.

10 THE COURT: Well, was he a citizen of both Jamaica  
11 and the United States?

12 MR. MARUTOLLO: Up until January 24, 2013, he was  
13 only legally a citizen of Jamaica, and I'm not sure now.

14 THE COURT: You're not conceding that his  
15 citizenship accrued when his father was naturalized?

16 MR. MARUTOLLO: No, your Honor. We concede that as  
17 of January 24, 2013, when the Board of Immigration Appeals  
18 indicated that the plaintiff derived citizenship from his  
19 father in 2002 at that stage, yes, he was a U.S. citizen but  
20 we have to look at --

21 THE COURT: He was not a U.S. citizen until 2002?

22 MR. MARUTOLLO: Looking at it from today, your  
23 Honor, yes, he was a citizen in 2002. Looking at it from the  
24 time he was detained in immigration detention he was not a  
25 citizen throughout that entire period. We have to look at

1 these facts respectfully, your Honor, in a vacuum.

2 THE COURT: Why wasn't he a citizen? He didn't have  
3 to file anything to become a citizen, did he?

4 MR. MARUTOLLO: Your Honor, in 2002, when his father  
5 naturalized, the plaintiff needed to establish all of the  
6 elements that he lived with his father, he was in the custody  
7 of his father.

8 THE COURT: He needed to establish before what?

9 Wasn't he automatically a citizen? It wasn't the kind of  
10 situation which, I take it, exists where. You have to make a  
11 declaration at some point that you are giving up, adjuring, a  
12 foreign potentate and all that stuff.

13 There are such cases, aren't there?

14 MR. MARUTOLLO: There are, but this case is unique.

15 THE COURT: This is not such a case. He  
16 automatically was a citizen.

17 MR. MARUTOLLO: But when he was detained by ICE, he  
18 had the burden to show because he was born in Jamaica, he had  
19 the burden to show that he was, in fact, a U.S. citizen. And  
20 the Government acted reasonably in looking at the information  
21 available to them at the time, and with due care, in  
22 determining that he was not a citizen and, in fact, five  
23 separate boards and judges...

24 THE COURT: But that's a different question with  
25 respect to whether he was a citizen automatically, that's what

1 I'm asking you.

2 MR. MARUTOLLO: So -- I'm sorry. To answer your  
3 question -- you're right -- automatically, looking at this  
4 today, he was a citizen in 2002.

5 THE COURT: And I posed the question to you about,  
6 which you'll probably have it look up and send me a letter on,  
7 what was his Jamaican citizenship at that point when he became  
8 an American citizen. Was he at that point, according to your  
9 position, a man without a country --

10 MR. MARUTOLLO: My position is, your Honor, at that  
11 time there's been no evidence introduced that indicated that  
12 he ever renounced his Jamaican citizenship at any point. So,  
13 at that point --

14 THE COURT: Do you have to renounce, that's the  
15 question. I wish you would give me a letter on it. Does he  
16 have it renounce, or does he lose it, or does he have a  
17 citizenship of both countries even as of today?

18 MR. MARUTOLLO: Well, your Honor.

19 THE COURT: All right. I suppose I'm thinking of my  
20 grade school public education in New York, which was very  
21 thorough, and we had to, in about the third grade, read the  
22 old story "The Man Without a Country," remember, who bounced  
23 back and forth, couldn't land any place. Perhaps the question  
24 isn't relevant but I'd like a letter.

25 MR. MARUTOLLO: Definitely, your Honor, we will file

1 a letter.

2 We direct your Honor to -- we have looked at this, really,  
3 from the Government's perspective as to how the Government  
4 acted in this case, and under the Due Care Exception, of the  
5 Federal Tort Claims Act, the United States's waiver of  
6 sovereign immunity shall not apply to any claim based upon an  
7 act or omission of an employee of the Government exercising  
8 due care in the execution of a statute or regulation whether  
9 or not the statute or regulation is valid. The Government is  
10 required to act with due care, not the ideal paragon, not  
11 exemplary conduct with the aid of hindsight, but with due  
12 care.

13 THE COURT: Well, isn't due care the obverse of  
14 negligence?

15 MR. MARUTOLLO: Your Honor, the Government did act  
16 reasonably here.

17 THE COURT: The issue is here is whether or not they  
18 were negligence as of that point. The statute doesn't  
19 preclude the recovery, the issue is negligence. Due care is  
20 negligence. Due care is what a reasonable person would  
21 consider. Reasonable care under the circumstances given the  
22 importance of the issue and the available information as I  
23 understand it.

24 MR. MARUTOLLO: And, in this situation, with the  
25 available information that the Government had before it, the

1 Government acted reasonably. The evidence will --

2 THE COURT: So your claim is he wasn't negligent.

3 MR. MARUTOLLO: Right, the Government wasn't  
4 negligent.

5 THE COURT: Not that the statute precludes but that  
6 they were not negligent.

7 MR. MARUTOLLO: Respectfully, your Honor, as set  
8 forth in our briefs, there is some case law that I believe  
9 we cited to that indicated that is a jurisdictional bar under  
10 the FTCA if the Government actors are acting with due care in  
11 applying the statute.

12 THE COURT: But that's still the negligence  
13 standard, is it not?

14 MR. MARUTOLLO: Ultimately yes. I mean, it is  
15 exercising due care.

16 THE COURT: So it is the same issue.

17 MR. MARUTOLLO: Well, your Honor, the evidence again  
18 will show.

19 THE COURT: It's not the statute. It's the fact  
20 that that is the basis of jurisdiction and liability of  
21 negligence as I understand the position.

22 MR. MARUTOLLO: And here the Government did act  
23 reasonably and with due care pursuant to the statutory  
24 immigration law.

25 The evidence, your Honor, will show that plaintiff's case was

1 first referred to Immigration and Customs Enforcement by the  
2 New York State Department of Corrections because plaintiff was  
3 born in Jamaica and had been convicted of two separate  
4 felonies -- attempted robbery in the second degree and  
5 attempted criminal sale of cocaine in the third degree.

6 THE COURT: Had he claimed before that communication  
7 from the New York correctional authorities that he was a  
8 United States citizen?

9 MR. MARUTOLLO: It appears that he did; however, the  
10 rules are that, according to the Department of Correction, if  
11 he's a foreign-born national with multiple aggravated  
12 felonies, he needs to be referred for investigation to ICE.

13 THE COURT: They didn't make an investigation, and  
14 their referral was of no significance on the issue of whether  
15 he was, in fact, an American citizen, right?

16 MR. MARUTOLLO: Right.

17 Your Honor had asked earlier at a previous hearing if the  
18 plaintiff had been picked up on the street or something along  
19 those lines and here this is not that kind of case.

20 THE COURT: I know he was transferred. I understand  
21 that, he was taken from the jail and transferred --

22 MR. MARUTOLLO: Now, your Honor, you'll hear  
23 from --

24 THE COURT: -- from the prison he was in prison and  
25 he got a shorter sentence because of his boot camp training.

1                   MR. MARUTOLLO: Your Honor, in this case, you will  
2 hear from Officer Erik Andren who met with plaintiff on  
3 October 9, 2007, while the plaintiff was still in state  
4 custody. At that time, Officer Andren asked plaintiff  
5 questions in order to determine whether plaintiff could have  
6 derived U.S. citizen from his parents.

7 Plaintiff, however, only provided Officer Andren with the  
8 names of his parents, Hopeton Watson, and his stepmother,  
9 Clare Watson, and their phone number. The plaintiff did not  
10 provide any other information, not their middle names, not  
11 anything else.

12 Officer Andren, in turn, requested the immigration files of  
13 the plaintiff as well as immigration files of Hopeton Watson  
14 and Clare Watson. You'll hear that based on the limited  
15 information provided by plaintiff, Officer Andren searched  
16 ICE's database for plaintiff's parents and found a match with  
17 individuals named Hopeton and Clare Watson, who are from  
18 Jamaica, and living in the New York area. The evidence will  
19 show that Officer Andren's actions reflect diligence and due  
20 care.

21 Now, once Hopeton, Clare, and Davino Watson's  
22 A Files were received plaintiff's case was passed on to the  
23 next step, and you'll hear from Deportation Officer Juan  
24 Estrada and, his supervisor, now Special Agent Michael Ortiz  
25 who continued the investigation. Officer Estrada and

1 Agent Ortiz will tell that you they reviewed the A Files,  
2 consulted with attorneys from ICE's Office of Chief Counsel.  
3 The ICE attorneys found that there was legal sufficiency to  
4 detain plaintiff. And, as your Honor pointed out during the  
5 plaintiff's opening, there was no need for an immigration  
6 judge or any other judge to approve this decision and, as a  
7 result, on May 8, 2008, the Government, acting with due care,  
8 detained plaintiff in ICE custody.

9 Now, your Honor, it was later determined that the A File that  
10 was reviewed belonged to a different person with the same name  
11 as plaintiff's father, a Hopeton Watson who was also from  
12 Jamaica and who also lived in the New York area.

13 But, again, the evidence will show that the only information  
14 available to the Government at this stage in the proceedings  
15 was information that was provided by plaintiff, and the  
16 Government's requirement here again is to act with due care,  
17 not to act with conduct that's best viewed only through the  
18 lens of 20/20 hindsight. The evidence will show that the  
19 Government's efforts reflected diligence here.

20 Now, indeed after June of 2008, the evidence shows that the  
21 plaintiff.

22 THE COURT: When did they find out that the people  
23 they thought were the parents were not?

24 MR. MARUTOLLO: After June of 2008. After June of  
25 2008. And, at that point, the plaintiff provided more

1 information and he provided his father's U.S. certificate of  
2 naturalization.

3 Now, importantly, however, the evidence will show that this  
4 information did not prove plaintiff's U.S. citizenship because  
5 under the law at that time plaintiff could not derive  
6 citizenship through his father even if the were a citizen  
7 because he had not been a legitimated child under New York or  
8 Jamaican law.

9 The evidence will show that plaintiff went before an  
10 immigration judge who determined that plaintiff was not a  
11 citizen. Plaintiff then appealed his case to the Board of  
12 Immigration Appeals which also determined that plaintiff was  
13 not a citizen.

14 Plaintiff then appealed his case to the Second Circuit, and  
15 the Second Circuit initially determined that the plaintiff  
16 was not a citizen. And, in fact, both the Board of  
17 Immigration Appeals and the Second Circuit also determined  
18 that plaintiff had not presented evidence to show that his  
19 biological father --

20 THE COURT: When did the Second Circuit decide that?

21 MR. MARUTOLLO: Initially in 2009. Their initial  
22 determination that he was not a U.S. citizen was in 2009.

23 THE COURT: I don't understand that split. I wasn't  
24 aware that the Second Circuit had changed its view. I thought  
25 that they sent it back.

1                   MR. MARUTOLLO: Initially, your Honor, there was an  
2 order issued by the Second Circuit indicating that the  
3 plaintiff had not presented evidence to show that his  
4 biological father had legal custody of him at that time and  
5 that the plaintiff was said to have legitimated as a child.

6                   THE COURT: Was that a mandate? What was that?

7                   MR. MARUTOLLO: I believe it was a mandate let me  
8 get the opinion. One moment, your Honor.

9                   MR. CHO: II.

10                  THE COURT: Thank you. This is marked Court  
11 Exhibit 1 at this hearing opening.

12                  (Court's Exhibit 1 was marked in evidence as of this  
13 date.)

14                  Excuse me for a moment while I read this.

15                  (Reading document.)

16                  THE COURT: "The Court expresses no view on the  
17 merits."

18                  Now, this is case 09-0657-AG. This is a mandate. What was  
19 the mandate that got this case back? Let me see that one.

20                  MR. MARUTOLLO: Sure, your Honor. That's  
21 plaintiff's Exhibit Q, that's the October 8, 2009. The  
22 Second Circuit recalled the mandate and reinstated the  
23 petition for review.

24                  MR. CHO: Government Exhibit MM.

25                  THE COURT: Let me see the document.

1 MR. MARUTOLLO: This is Government Exhibit MM.

2 THE COURT: Court Exhibit 2 for this discussion.

3 (Court's Exhibit 2 was marked in evidence as of this  
4 date.)

5 THE COURT: It's not same case Docket No. 09-0657-AG  
6 but before different judges. Cabranes, Straub, and Raggi.  
7 "It is hereby ordered that the petition for review is granted  
8 and the case is remanded for further proceedings in accordance  
9 with the opinion of this court. The mandate shall issue  
10 forthwith per curiam."

11 This was an unpublished opinion; correct?

12 MR. MARUTOLLO: Yes, your Honor. Just to be clear,  
13 the October 8, 2009, decision from the Second Circuit recalled  
14 the mandate and then subsequently on May 31, 2011, the  
15 Second Circuit issued its decision remanding its case to BIA.

16 THE COURT: So there were three documents?

17 MR. MARUTOLLO: Right.

18 THE COURT: And the July 9th -- lets me see the  
19 intermediate document.

20 MR. MARUTOLLO: What documents do you have, your  
21 Honor? May I see them for a moment? I'm not sure if I gave  
22 you the wrong decision.

23 I'm sorry.

24 THE COURT: I'll keep those.

25 MR. MARUTOLLO: I'm sorry. Where is the other one?

1 MR. CHO: Plaintiff's Exhibit 17.

2 MR. MARUTOLLO: This is the October 8, 2009, do you  
3 mean.

4 THE COURT: Court Exhibit 3.

5 (Court's Exhibit 3 was marked in evidence as of this  
6 date.)

7 THE COURT: Petitioner pro se moves to recall the  
8 mandate. Again it's 09-0657, October 8, 2009. The judges are  
9 the same Calabrese, Hall, and Sessions. "The motion is  
10 granted. The mandate is recalled. Petition for review is  
11 reinstated." The denial of the petitioner's leave to proceed  
12 in forma pauperis is dismissed and dismissed his petition for  
13 review is hereby withdrawn."

14 A stay of removal was issued on October 8, 2009. Then on  
15 May 31, 2011, before a different panel, they had an  
16 unpublished opinion.

17 This was never published, right?

18 MR. MARUTOLLO: I don't believe so, your Honor.

19 THE COURT: So it has no -- it had limited  
20 authority, but it was in the case it was the authority. This  
21 was the one I was aware of. I wasn't aware of those prior. I  
22 should have been I suppose but I don't know in going over the  
23 papers I wasn't aware of it they had switched.

24 MR. MARUTOLLO: Your Honor, I'm sorry, I may have  
25 misspoken. If the Second Circuit May 31st opinion was

1 published, it may have been published, the May 31, 2011. I  
2 don't have the document in front of me.

3 (A brief pause in the proceedings was held.)

4 THE COURT: Do you mind if I hold those copies?

5 MR. MARUTOLLO: Of course, your Honor.

6 THE COURT: Thanks.

7 MR. MARUTOLLO: Now, your Honor, again.

8 (A brief pause in the proceedings was held.)

9 THE COURT: I'm sorry. I have to hesitate because I  
10 wasn't aware of the two prior opinions of the Court of  
11 Appeals.

12 MR. MARUTOLLO: And those opinions, your Honor, are  
13 very significant because the first opinion in 2009 actually  
14 determined even though they didn't talk about the merits of  
15 the case they indicated that the evidence showed that there  
16 was no proof of custody.

17 THE COURT: That was withdrawn.

18 MR. MARUTOLLO: But the --

19 THE COURT: The Court of Appeals, in its majesty,  
20 says, "We made a mistake," so I don't see what weight that  
21 original opinion has of which I was not aware.

22 MR. MARUTOLLO: Additionally, your Honor, I think  
23 the weight is significant because it does talk about what  
24 evidence had been presented at that time.

25 THE COURT: I see, okay. I understand. That's a

1 point.

2 MR. MARUTOLLO: Now, your Honor, plaintiff  
3 separately filed an application for a Certificate of  
4 Citizenship an N-600 application with the USCIS.

5 THE COURT: Pro se.

6 MR. MARUTOLLO: I'm sorry.

7 THE COURT: Pro se.

8 MR. MARUTOLLO: Initially pro se but then he did  
9 have Gibson & Dunn as his attorneys.

10 THE COURT: After the Court of Appeals asked them.  
11 When did they come into the case?

12 MR. MARUTOLLO: He had consultations with in April  
13 of 2011, so they did come into the case while the removal  
14 proceedings are ongoing.

15 THE COURT: But up to that point he had no counsel.

16 MR. MARUTOLLO: You will hear, your Honor.

17 THE COURT: And their appearance was very limited as  
18 I recall. They were explicit that they weren't getting into  
19 the case generally just on this point because the Court of  
20 Appeals asked them to.

21 Go ahead.

22 MR. MARUTOLLO: Okay.

23 Your Honor, you'll hear at this trial from District  
24 Adjudication Officer Michelle Morris who adjudicated  
25 plaintiff's application for U.S. citizenship.

1 She will explain that her determination that plaintiff was not  
2 a U.S. citizen was based on the controlling precedent at that  
3 time, the Matter of Hynes case which held that a child born  
4 out of wedlock in Jamaica can be legitimated for  
5 U.S. citizenship purposes only through the marriage of its  
6 parents.

7 Now, your Honor, since it was undisputed that plaintiff's  
8 biological parents never married, plaintiff could not be  
9 deemed a U.S. citizenship at this time. He still had to prove  
10 he was a child --

11 THE COURT: I thought they did marry.

12 MR. MARUTOLLO: Respectfully, your Honor, they did  
13 not marry. His biological parents did not marry.

14 THE COURT: I was mistaken.

15 MR. MARUTOLLO: Now, your Honor, the plaintiff  
16 appealed this USCIS denial and the Administrative Appeals  
17 Office of the USCIS affirmed Officer Morris's decision that he  
18 was not a citizen.

19 The evidence will show that ultimately during this period five  
20 different and independent determinations were made that  
21 plaintiff did not derive U.S. citizenship through his father  
22 and, therefore, is not a citizen. And thus, the evidence will  
23 show that the Government acted with due care in determining  
24 that plaintiff was not a U.S. citizen.

25 Further, since the Government relied on ICE prosecutors and

1 immigration judges in detaining the plaintiff plaintiff's  
2 claim is barred your Honor the Intentional Tort Exception of  
3 the FTCA.

4 Now, the Second Circuit eventually ordered the Board of  
5 Immigration Appeals to clarify.

6 THE COURT: Excuse me. Say that again because that  
7 was not my opinion.

8 MR. MARUTOLLO: Sure, your Honor.

9 THE COURT: What is barred?

10 MR. MARUTOLLO: Our argument that we set forth in  
11 our conclusions more fully in our findings of fact and  
12 conclusions of law is that since the Government relied on ICE  
13 prosecutors and immigration judges in detaining the plaintiff,  
14 plaintiff's claims are barred by under the Intentional Tort  
15 Exception to the FTCA.

16 THE COURT: But they're not suing on intentional  
17 tort, they're suing on negligence.

18 MR. MARUTOLLO: Well, they're suing for false  
19 imprisonment, your Honor, as well.

20 THE COURT: I think I'm only going to try this case  
21 on negligence, that seems to be the gravamen of the claim.

22 MR. MARUTOLLO: We certainly --

23 THE COURT: It doesn't bar a negligence claim.

24 MR. MARUTOLLO: Well, it certainly bars any  
25 intentional tort which would include false imprisonment.

1                   THE COURT: Well, I think the case is going to go  
2 forward on negligence. I'll issue my opinion as soon as it  
3 can be typed up.

4                   MR. MARUTOLLO: Okay.

5 Your Honor, now, after the Second Circuit remanded the case to  
6 the Board of Immigration Appeals for clarification about  
7 legitimation. So before -- after they have issued this order,  
8 but before the Board of Immigration Appeals actually issued  
9 its decision do clarify its interpretation, attorneys from the  
10 Department of Homeland Security took the initiative,  
11 reanalyzed the Matter of Hynes case and the attorneys  
12 determined that the definition of legitimation used in the  
13 Hynes case was slightly different than the statutory  
14 definition applied to plaintiff's case.

15                  THE COURT: Why didn't they do that earlier?

16                  MR. MARUTOLLO: Because, your Honor, based on the  
17 law as it stood at that time, there had not been this  
18 Second Circuit decision calling into question how the  
19 Government applied the law. So only in -- once the Second  
20 Circuit called into question this interpretation which this  
21 whole case kind of turns on, its legal interpretation, only at  
22 that point did the Government --

23                  THE COURT: It wasn't this case that called it into  
24 question. That was another case; right?

25                  MR. MARUTOLLO: No, the Second Circuit in this case

1 called into question --

2 THE COURT: This is the case you rely on?

3 MR. MARUTOLLO: Well --

4 THE COURT: Not any independent case, this very case  
5 in the Court of Appeals.

6 MR. MARUTOLLO: Well, let me clarify, your Honor.

7 The Second Circuit in the Watson case, issued the order that  
8 you have, the May 30, 2011, order that indicated that the  
9 Board of Immigration Appeals needed to, basically, do a closer  
10 examination of how the term "legitimated" is defined in the  
11 Matter of Hynes case. And the Matter of Hynes case --

12 THE COURT: That's the first time they spoke about  
13 the Hynes decision.

14 MR. MARUTOLLO: The first time the Second Circuit  
15 spoke about it; correct.

16 THE COURT: So we don't have any other case, this is  
17 it.

18 MR. MARUTOLLO: That's correct, your Honor.

19 Now, your Honor, you'll also hear this trial from Field Office  
20 Director Michael Phillips who will tell you that in light of  
21 this reinterpretation, the plaintiff was released from ICE  
22 custody on November 2, 2011. Now, plaintiff claims that after  
23 his release, he remained falsely imprisoned because he could  
24 not find a job but the evidence will show; however, that the  
25 plaintiff did not make any serious attempts to locate a job,

1 and that his criminal history not his immigration status was  
2 the reason for his inability to find work.

3 Further, plaintiff suggested in the opening statement that  
4 plaintiff was homeless but the evidence will show they lived  
5 with his aunt; in fact, he went to Planet Fitness gym every  
6 day.

7 And, your Honor, as you pointed out, the USCIS database that's  
8 been referred to is not open to prospective employers. And  
9 you'll also learn at this trial, your Honor that apart are  
10 from any \$3,000-a-day figure. Prior to his detention in state  
11 custody, the plaintiff was making, approximately, \$8.50 an  
12 hour.

13 Now, your Honor, the plaintiff has failed to meet the elements  
14 of his negligence claim. The evidence will show that no  
15 breach of any duty occurred here. The Government relied on  
16 the, I'm sorry, let me rephrase that, your Honor.

17 The Government did reasonably investigate the plaintiff's  
18 claim of U.S. citizenship. Plaintiff's citizenship status was  
19 evaluated through an immigration court proceeding, proceedings  
20 before the Board of Immigration Appeals, USCIS proceedings,  
21 and you will also hear from Scott Schrader, a supervisory  
22 detention officer, who will also tell you reviews were done  
23 within the Buffalo facility's own investigative process.

24 Plaintiff also argued that the Government was negligent in not  
25 issuing plaintiff his Certificate of Citizenship. Again,

1 there is no private analog under New York law for the issuance  
2 of a document granting citizenship.

3 In any event, you will hear from Edward Newman, who is the  
4 Buffalo Field Office Director from USCIS who will explain how  
5 the citizenship process the worse, how USCIS acted reasonably  
6 in providing plaintiff with a certificate, and the evidence  
7 will show that the Government's efforts reflected diligence  
8 throughout these proceedings.

9 THE COURT: Why didn't it not give him a certificate  
10 when they released him?

11 MR. MARUTOLLO: Because the USCIS still needed to  
12 rely on Board of Immigration Appeals decision. Although --  
13 when he was released, the ICE believed that he may have been a  
14 citizen, they still needed to --

15 THE COURT: They believed he was a citizen or they  
16 wouldn't have released him.

17 MR. MARUTOLLO: Well, they released him on his own  
18 recognizance but, ultimately, under the statutory framework,  
19 before a Certificate of Citizenship can be issued, the Board  
20 of Immigration Appeals must issue a decision. So they didn't  
21 issue their decision until 2013, at that point, the plaintiff  
22 who is still represented by counsel at this later point  
23 needed, under the statute, to file an N-600 application, to  
24 reopen his N-600 application, and the Government acted  
25 reasonably in giving him that certificate.

1 THE COURT: I see.

2 MR. MARUTOLLO: Ultimately, your Honor, the evidence  
3 will show that the Government acted reasonably and with due  
4 care in this case and we ask that you return a verdict in  
5 favor of the United States.

6 THE COURT: Okay. Why don't we take a break for ten  
7 minutes and then call your first witness.

8 I take it that immediate copy has ordered by the parties.

9 MR. MARUTOLLO: Not yet, your Honor, but we will.

10 THE COURT: The Government will order it, okay. And  
11 defense counsel is appearing pro bono?

12 MR. MARUTOLLO: We're contingent.

13 THE COURT: Contingent fee?

14 MR. MARUTOLLO: Yes.

15 MR. FLESSNER: Yes.

16 (Recess in the proceedings was held.)

17 THE COURT: Call your witness, please.

18 MR. MARUTOLLO: Your Honor, may I have an  
19 opportunity just to respond to more fully to some of the  
20 questions you addressed --

21 THE COURT: Of course.

22 MR. MARUTOLLO: -- during the opening statement.

23 Just three issues, your Honor.

24 First, with respect to whether or not the plaintiff  
25 automatically became a U.S. citizen in 2002. Just to clarify

1 for the record, we believe that he does not automatically  
2 become a citizen in 2002. There needs to be a determination  
3 of legal custody of a legitimating parent in 2002 under  
4 8 U.S.C 1101(c).

5 And our position is essentially that the plaintiff failed to  
6 provide evidence to indicate that he was in his father's legal  
7 custody either at the time his father actually legitimated him  
8 when he was in Jamaica in 1991, or at the time when the father  
9 actually became a U.S. citizen in September 2002 roughly two  
10 months before the plaintiff's birthday.

11 Second, your Honor, we would just note under New York Law we  
12 would argue for purposes of negligence claim there is no  
13 private analog founding in a negligent detention or  
14 investigation, or arising out of any breach of internal agency  
15 memoranda; or, for that matter, regarding the issue of issuing  
16 of a citizenship certificate.

17 Finally, your Honor, with respect to your question regarding  
18 an advisory jury, it's our position that under Section 2402  
19 that there should be any cases against the United States  
20 should be tried without a jury and it's explicit in that.

21 THE COURT: Lets me see 2402, please.

22 MR. MARUTOLLO: I'll give you my copy if you'd like,  
23 your Honor.

24 THE COURT: Yes, I have it here. I'll look.

25 MR. MARUTOLLO: Underlined right here.

1                   THE COURT: Look up that post office case that I  
2 had. I've forgotten the name of it.

3                   (A brief pause in the proceedings was held.)

4                   THE COURT: 1346(a)(1) is what it is?

5                   MR. MARUTOLLO: Your Honor, that deals with tax  
6 issues.

7                   THE COURT: You have a case saying an advisory jury  
8 cannot be used?

9                   MR. MARUTOLLO: Your Honor, we can submit a letter  
10 with further cases on it.

11                  THE COURT: I would like to see a case citing that.

12 If you have one, let me see it. My position has been that I  
13 could use an advisory jury any time I wished.

14 Proceed.

15                  MR. FLESSNER: Your Honor, plaintiff is calling  
16 Davino Watson.

17 Your Honor, it was clear that Hopeton Watson's A File that the  
18 plaintiff was in the custody of his father, so the defendant  
19 knew that but that's not an issue.

20                  MR. MARUTOLLO: Objection, your Honor.

21                  THE COURT: We'll see what the evidence shows.

22                  MR. FLESSNER: Go ahead.

23                  THE COURT: The plaintiff.

24                  (Witness takes the witness stand.)

25                  COURTROOM DEPUTY: Please raise your right hand.

WATSON/DIRECT/FLESSNER

1 DAVINO WATSON, called by the Plaintiff, having been first duly  
2 sworn, was examined and testified as follows:

3 THE WITNESS: I do.

4 COURTROOM DEPUTY: Please state your name and spell  
5 your last name for the record.

6 THE WITNESS: My name is Davino Watson. D-a-v-i-n-o  
7 W-a-t-s-o-n.

8 COURTROOM DEPUTY: Have a seat.

9 HEADER DIRECT EXAMINATION

10 BY MR. FLESSNER:

11 Q Mr. Watson, were you detained by the Immigration and  
12 Customs Enforcement on May 8, 2008?

13 A Yes.

14 Q Do you remember how many days you were detained by them?

15 A I was detained for about a thousand -- 1,207 something.

16 Q Would it be 1,273?

17 A Yes, sir.

18 Q Are you a United States citizen?

19 A Yes, sir.

20 Q When did you become a United States citizen?

21 A I became a United States citizen on September 17, 2002.

22 Q And what was the vehicle by which you became a  
23 United States citizen?

24 A I derived citizenship from my father.

25 Q Okay. Is that the date that your father was naturalized?

ANTHONY FRISOLONE, RDR, CRR

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q Were you living with your father at the time?

3 A Yes, sir.

4 Q Were you under the age of 18 at the time?

5 A Yes, sir.

6 Q Were you in the United States legally at that time?

7 A Excuse me, sir.

8 Q Were you in the United States legally at that time?

9 A Yes, sir.

10 Q Could you tell the Court your highest level of education  
11 that you have?

12 A The 11th grade, sir.

13 Q Did you ultimately obtain a Graduate Equivalency Diploma?

14 A Yes, sir.

15 Q When was that?

16 A 2013, sir.

17 Q Since being released from ICE custody, have you since  
18 enrolled in any kind of training cases?

19 A Yes, sir.

20 Q Tell the Court what you did?

21 A I enrolled into a trade school called Northern Manhattan  
22 Industrial Corporation and I graduated last week with a  
23 certification for building maintenance and weatherization.

24 Q What does that permit you to do?

25 A To get employment.

ANTHONY FRISOLONE, RDR, CRR

WATSON/DIRECT/FLESSNER

1 Q Okay. Have you ever been convicted a crime?

2 A Yes, sir.

3 Q When was the first time you were convicted of a crime?

4 A I believe somewhere in 2003. I don't remember.

5 Q What was that conviction for?

6 A Attempted robbery.

7 Q Did you receive a sentence for that?

8 A Yes, I did.

9 Q What was it?

10 A Six months incarceration, five years probation.

11 Q And what was the -- were you convicted of a second crime  
12 as well?

13 A Yes, sir.

14 Q What was that?

15 A I was convicted for attempted sale of a controlled  
16 substance.

17 THE COURT: Attempted what?

18 THE WITNESS: Attempted sale of a controlled  
19 substance.

20 THE COURT: Attempt to do what?

21 THE WITNESS: It was that was --

22 THE COURT: What was the crime? I just didn't hear  
23 you.

24 THE WITNESS: Attempted sale of a controlled  
25 substance.

WATSON/DIRECT/FLESSNER

1 THE COURT: Deal?

2 THE WITNESS: Sale, sir.

3 THE COURT: Sale. Oh, attempted sale. Thank you.

4 EXAMINATION BY

5 MR. FLESSNER:

6 (Continuing.)

7 Q All right. And did you receive a sentence for that as  
8 well?

9 A Yes, sir.

10 Q What was that sentence?

11 A Three and a half years, sir.

12 Q And where did you serve that?

13 A Well, I was sent to a state program called Lake View  
14 Shock Incarceration.

15 Q How long were you there?

16 A Approximately eight months.

17 Q Explain to the Court what the Lake View Shock and  
18 Incarceration Program is?

19 A Well, it's a program for men and women to, you know,  
20 change your life. It's very military based, I guess, I would  
21 say and it's very hardcore.

22 MR. FLESSNER: I want to make sure that's on.

23 A It's to reinvent yourself to give you the proper tools  
24 you need to go back into society and be a better person.

25 Q Did that reinvent you going through that program?

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q Explain to the Court how it changed you?

3 A Well, I worked closely with my drill instructor, Smith.

4 At the time, and we had different classes, different groups,  
5 and it just made me realize that I was traveling in the wrong  
6 path in life and that I needed to readjust myself and teach me  
7 about integrity. Lake View teach me about having honor and  
8 just being a vert man all around.

9 Q Describe for the Court your state of mind when you were  
10 scheduled to be released on May 8, 2008, from the Lake View  
11 Shock and Incarceration Program?

12 A I was ecstatic; I was happy. I was ready to go home and  
13 be with my family again. I wanted to go to college and do  
14 better.

15 Q All right. Were you, in fact, released from the Lake  
16 View Shock Incarceration Program on May 8, 2008?

17 A Repeat that question.

18 Q You were released from the Lake View Incarceration Shock  
19 Program on May 8, 2008; correct?

20 A No, sir.

21 Q You were released from that program?

22 A Yes, sir.

23 Q What happened to you on that day?

24 A I was arrested by ICE officers.

25 Q Prior to your release from the Lake View Shock and

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1 Incarceration Program, do you remember being interviewed by  
2 Deportation Officer Andren of ICE?

3 A Yes, sir.

4 Q And did you inform Officer Andren that you were a  
5 United States citizens?

6 MR. MARUTOLLO: Objection.

7 THE COURT: Why?

8 MR. MARUTOLLO: Your Honor, it's a leading question.

9 THE COURT: Overruled.

10 Q Go ahead.

11 A I said that I was indeed a United States citizen.

12 (Continued on the next page.)

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WATSON/DIRECT/FLESSNER

1 DIRECT EXAMINATION (Cont'd.)

2 BY MR. FLESSNER:

3 Q How did he respond to that?

4 A I don't recall.

5 Q Explain to the Court what happened to you after you were  
6 released from Lakeview Incarceration and Shock Program?

7 A Well, I was being processed out and I believed that I was  
8 heading home and two ICE agents approached me and said that  
9 they have a warrant for my arrest.

10 Q And how did you respond?

11 A I was confused, I didn't really understand.

12 Q Did they tell you why they had a warrant for your arrest,  
13 why you were being arrested?

14 A Yeah, they said they have reason to believe that I was an  
15 illegal alien.

16 Q What did you say?

17 A That I'm not, that I'm a U.S. citizen.

18 Q What did they say in response to that?

19 A They said, well, they're going to arrest me right now and  
20 in 24 hours I will see a judge and if so, indeed that I am a  
21 United States citizen, I will be released within 24 hours.

22 Q Did that happen, did you see a judge within 24 hours?

23 A No, sir.

24 Q Do you have a set of exhibits up there in front of  
25 you?

WATSON/DIRECT/FLESSNER

1 A Yes.

2 Q Would you turn to Plaintiff's Exhibit 54.

3 THE COURT: Can we get a concession that all these  
4 exhibits are in evidence?

5 MR. MARUTOLLO: No, Your Honor, we have some  
6 objections to certain exhibits.

7 THE COURT: So, you want to take them up one at a  
8 time?

9 MR. MARUTOLLO: Yes, Your Honor.

10 Your Honor, we have no objection to this particular  
11 exhibit, Plaintiff's Exhibit 54.

12 THE COURT: Admitted.

13 (Plaintiff's Exhibit 54 so marked in evidence.)

14 Q Do you recognize the documents found in Plaintiff's  
15 Exhibit 54?

16 A Yes, sir.

17 Q Are these documents that were given to you on May 8, 2008  
18 by the ICE officers?

19 A Yes, sir.

20 Q All right. And if you'll turn to what's Bates  
21 numbered -- the very last page, 0723 -- well, it's got two  
22 Bates numbers, it's 0723 or 0727, the very last page of that  
23 exhibit.

24 A Yes, sir.

25 Q Do you see your signature on that page?

HOLLY DRISCOLL, CSR

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q And just above the signature of Michael Ortiz there's a  
3 sentence with a checked box, do you see that?

4 A Yes, sir.

5 Q Would you read that checked box, that sentence for us?

6 A Yes, sir.

7 "You may not request a review of this determination  
8 by an immigration judge because the Immigration and  
9 Nationality Act prohibits your release from custody."

10 Q Right.

11 And it states you're detained in the custody of of  
12 the Service, is that right?

13 A Yes, sir.

14 Q At the bottom it says -- I'm just going to move on.

15 Where did you go when you were detained on May 8 of  
16 2008?

17 A I was transferred to a facility called Allegheny County.

18 Q All right. Did you appear before an immigration judge  
19 while you were at the Allegheny County Jail?

20 A No, sir.

21 Q Based on the statement that says that you're being  
22 detained without possibility of review of an immigration  
23 judge, did you believe that you could appeal the decision to  
24 detain you?

25 A No, sir.

WATSON/DIRECT/FLESSNER

1 MR. MARUTOLLO: Objection.

2 THE COURT: On what ground?

3 MR. MARUTOLLO: Again, Your Honor, I think that's a  
4 leading question.

5 THE COURT: Overruled.

6 A No, sir.

7 Q Did you believe that when you were in ICE custody that  
8 you were free to leave the ICE custody?

9 A No, sir.

10 Q Did you consent to being detained by ICE agents?

11 A No, sir.

12 Q And you did tell the ICE agents that you were a United  
13 States citizen?

14 A Yes, sir.

15 Q Did you tell officials at the Allegheny County Jail that  
16 you were a U.S. citizen?

17 A Yes, sir.

18 Q How many times?

19 A Every chance that I'd get.

20 Q When you told the officials, the ICE officials that you  
21 were a U.S. citizen, how did they respond to you?

22 MR. MARUTOLLO: Objection, I believe it calls for  
23 hearsay, Your Honor, they're not defendants, they're not party  
24 admissions, their responses are irrelevant, they're hearsay.  
25 They're offered for the truth of the matter asserted.

HOLLY DRISCOLL, CSR

WATSON/DIRECT/FLESSNER

1 MR. FLESSNER: No, it goes to his state of mind.

2 THE COURT: Excuse me. They are on his state of  
3 mind and irrelevant to whether the defendant was acting  
4 negligently.

5 Overruled.

6 Q While you were at the Allegheny County Jail, were you  
7 able to obtain the Certificate of Citizenship of your father?

8 A Yes, sir.

9 Q How did you obtain that?

10 A My father faxed it to the Allegheny County Jail.

11 Q Turn to Exhibit 34 please.

12 Do you recognize Exhibit 34, Plaintiff 34?

13 A Yes, sir.

14 Q What is it?

15 A That is my father's naturalization certificate.

16 Q And if you look at the right-hand side of that document,  
17 there's a date and a time and it says Fax; could you read that  
18 to the Court please?

19 MR. MARUTOLLO: Objection, Your Honor, this exhibit  
20 is not in evidence yet and we object to it.

21 THE COURT: On what ground?

22 MR. MARUTOLLO: Your Honor, there's been no evidence  
23 or any foundation established regarding this document,  
24 particularly when there's a duplicate document that does not  
25 contain any information about a fax number or anything along

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1 those lines. This document is duplicative of Plaintiff's  
2 Exhibit 2 and any questions about this.

3 THE COURT: It does have a fax number at the top,  
4 05/29/2008, 07:38 Fax.

5 MR. MARUTOLLO: Right, Your Honor, we would argue  
6 that that notation is confusing and is prejudicial to the  
7 government because the original document here did not contain  
8 that fax.

9 THE COURT: Where is the -- oh, you mean his  
10 original certificate?

11 MR. MARUTOLLO: Correct, Your Honor.

12 THE COURT: Overruled.

13 How did you receive this, through fax?

14 THE WITNESS: Yes, sir.

15 Q Did you receive it on May 29 of 2008?

16 THE COURT: It's admissible based on his testimony.

17 Q And this is a Certificate of Citizenship of your father;  
18 is that correct?

19 A Yes, sir.

20 Q And this was placed in your A-File, wasn't it?

21 A Yes, sir.

22 THE COURT: It's admitted.

23 (Plaintiff's Exhibit 34 so marked in evidence.)

24 Q What is your father's full name?

25 A My father's full name is Hopeton Ulando Watson.

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1 Q And the date of this document is September 17 of 2002,  
2 correct?

3 A Yes, sir.

4 Q And how old were you in September of 2002?

5 A I was 17 years old, sir.

6 Q And where were you living?

7 A With my father, sir.

8 Q What did the ICE agents do -- did you give this document  
9 to the ICE agents?

10 A Yes, sir.

11 Q What did they do with it?

12 A Well, I assume at this point that they didn't forward it  
13 to --

14 MR. MARUTOLLO: Objection.

15 A -- the government.

16 MR. MARUTOLLO: Objection, Your Honor.

17 THE COURT: I didn't understand the question and  
18 answer.

19 Q Do you know what, if anything, the ICE agents did with  
20 the certificate of naturalization belonging to your father,  
21 Exhibit 34?

22 A Well, when I got the certificate I gave it to the  
23 deportation officer that visited the unit that I was in and I  
24 specifically told him this is evidence and proof of my  
25 citizenship, to forward this to whatever department needed the

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1 document, you know, the judge in this case and I would assume  
2 that they did not.

3 MR. MARUTOLLO: Objection, Your Honor, that's the  
4 part we're objecting to.

5 THE COURT: The assumption is stricken.

6 He can say something about it, try to draw it out.

7 MR. FLESSNER: I'm sorry, he was interrupted.

8 Q Please finish.

9 A Yes, I would assume --

10 MR. MARUTOLLO: Objection, Your Honor.

11 A -- they --

12 THE COURT: I don't care for his assumption.

13 MR. FLESSNER: Your Honor, if we could just ask  
14 counsel not to interrupt him, he can certainly put his  
15 objection on the record but he shouldn't interrupt him as he's  
16 speaking.

17 THE COURT: Try to get to what he knows about what  
18 happened, not his assumptions.

19 MR. MARUTOLLO: Your Honor, I was objecting to his  
20 testimony as he was speaking because that's, as Your Honor  
21 just ruled, that's objectionable testimony.

22 THE COURT: Proceed.

23 Q Turn to Exhibit 39 please. Do you recognize that  
24 exhibit?

25 A Yes, sir.

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1 THE COURT: 34 is in evidence.

2 MR. FLESSNER: Now we're on 39, Your Honor.

3 THE COURT: Yes.

4 Q What is that exhibit?

5 A This is a letter that I had sent to my deportation  
6 officer at the time, Gunther, along with my father's  
7 citizenship paper in regard to my N-600 application.

8 Q All right. Is this your handwriting?

9 A Yes, sir.

10 Q Is that your signature?

11 A Yes, sir.

12 Q And that's dated July 14th of '08?

13 A Yes, sir.

14 MR. FLESSNER: Move to admit 39.

15 MR. MARUTOLLO: No objection.

16 THE COURT: Admitted.

17 (Plaintiff's Exhibit 39 so marked in evidence.)

18 Q All right. Read for us the note that you addressed to  
19 Officer Gunther on July 14th of 2008.

20 A "Good afternoon and how are you. This inmate is sending  
21 these documents regarding the N-600 application I sent to  
22 Deportation Officer DeLong. I completed it and sent it back  
23 to him like you requested on July 10, 2008. I would like you  
24 to send these documents with the N-600 or send them to  
25 wherever you send the N-600 form because I think it can help

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1 my argument about being a citizen and any help would be  
2 greatly appreciated. Thank you."

3 Q All right. And turn to the following page of Plaintiff's  
4 39, what is that?

5 A The following page you said, sir?

6 Q That page (indicating.)

7 A This is a certificate of -- my mother and father marriage  
8 certificate.

9 Q All right.

10 THE COURT: This woman was not the natural mother, I  
11 was mistaken about that?

12 MR. FLESSNER: That's his stepmother.

13 THE COURT: The stepmother?

14 MR. FLESSNER: Yes.

15 THE COURT: I didn't understand that from the  
16 record, okay.

17 Q The following page is what?

18 A This is my stepmom's naturalization certificate, sir.

19 Q Then the page after that?

20 A This is my father's naturalization certificate.

21 Q And you notice on your father's naturalization  
22 certificate there is also that same fax number of May 8 -- or  
23 May 29th of 2008, correct?

24 A Yes, sir.

25 Q All right. So, you enclosed these documents and gave

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1 them to your deportation officer to demonstrate that you were  
2 a United States citizen?

3 A Yes, sir.

4 Q How did they respond to that?

5 A Well --

6 Q Well, what, if anything, did they do?

7 A I don't believe that they did anything, Your Honor --  
8 sir, excuse me.

9 Q All right. If you'll turn to Plaintiff's 90 please,  
10 that's all the way in the back of the book you have in front  
11 of you.

12 A Say that again.

13 Q 90, 9-0.

14 Do you recognize this document?

15 A Yes, sir.

16 Q What is it?

17 A My detention history.

18 Q All right.

19 MR. FLESSNER: Move to admit 90.

20 MR. MARUTOLLO: No objection, Your Honor.

21 THE COURT: Admitted.

22 (Plaintiff's Exhibit 90 so marked in evidence.)

23 Q All right. So, looking at the very bottom where it says  
24 the column Detention Location, it says Allegheny County Jail,  
25 what date does it say you were booked into the Allegheny

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1 County Jail?

2 A 05/08/2008.

3 Q And what date does it say you were booked out?

4 A 06/23/2008.

5 Q And then you moved to the Buffalo detention center,  
6 correct?

7 A Yes, sir.

8 Q And you were in Buffalo from 6/23/08 until what?

9 A 09/24/2009.

10 Q And then it says you were moved to -- is Buffalo and  
11 Batavia the same facility?

12 A Yes, sir.

13 Q So, on September 24th of 2009, while there's a different  
14 column there, you basically stayed at the same place?

15 A Yes, sir.

16 Q When were you ultimately released from Buffalo?

17 A I was released from Buffalo 10/24/2011.

18 Q 1,270 -- well, no, not quite yet, I'm sorry.

19 And from Buffalo where did you go?

20 A I was transferred to Louisiana, sir.

21 Q And you were there one day, correct?

22 A Yes, sir.

23 Q Then where did you go?

24 A I was then transferred to Alabama, sir.

25 Q All right. And you arrived there on October 25th of

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1 2011?

2 A Yes, sir.

3 Q And you were released a week later?

4 A Yes, sir.

5 Q Being in detention 1,273 days in total?

6 A Yes, sir.

7 Q While you were detained at the Buffalo Federal Detention  
8 Center, how many hours a day were you confined to your cell?

9 A I'd say roughly around 18, sir.

10 Q And when you were free to leave your cell, where did you  
11 go?

12 A Well, we have recreation which is the gym, I would attend  
13 that sometimes, and the leisure library, I would attend that  
14 sometimes also, and the law library.

15 Q What was your focus while you were detained at the  
16 detention center?

17 A My primary focus was to get out of jail, get out of  
18 immigration custody, to prove that I was a United States  
19 citizen.

20 Q Explain to the Court how your detention affected you  
21 emotionally?

22 MR. MARUTOLLO: Objection.

23 THE COURT: On what ground?

24 MR. MARUTOLLO: That, again, this is a trial for  
25 liability and his emotional state would have no bearing on

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1 whether or not the government was liable.

2 THE COURT: It might bear on how he prosecuted his  
3 claim, I'll allow it.

4 A Well, I was very stressed out due to the fact that for  
5 the majority of the time I didn't have any counsel, you know,  
6 I wasn't sure about anything, I was just trying, you know, and  
7 using resources that I had was very limited. I got depressed  
8 and I was just devastated that, you know, thinking to be  
9 deported back to a country where it's violence and there's not  
10 much hope and I was just broken.

11 Q Were you ever placed in segregation while you were at the  
12 Buffalo detention center?

13 A Yes, sir.

14 Q How long?

15 A I was for I believe two months, I'm not sure, I don't  
16 remember.

17 Q Explain to the Court what it means to be placed in  
18 segregation?

19 A Well, that's when you -- that's when you violate the  
20 rules, the prison rules and in this case I had a fight with  
21 another inmate.

22 Q But tell us what it means to be in segregation, where are  
23 you?

24 A Well, I'm in a cell for 24 hours.

25 Q And you did that for two months?

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1 A Yes, sir.

2 Q While you were at the Buffalo Federal Detention Center  
3 facility were you assigned deportation officers?

4 A Yes, sir.

5 Q Do you remember how many deportation officers were  
6 assigned to you during your time at Buffalo?

7 A Yes, sir.

8 Q How many?

9 A Four.

10 Q Do you recall their names?

11 A Yes, sir.

12 Q Could you tell the Court please?

13 A One deportation officer, DeLong; one deportation officer,  
14 Schrader; and one deportation officer, Gunther, and there's a  
15 female that I don't recall her name, I'm sorry.

16 Q Tell the Court what you remember about how helpful the  
17 deportation officers were to you?

18 A I would say that they weren't helpful at all.

19 Q Well, tell us what you remember about Mr. Schrader, did  
20 he provide you -- did you tell Officer Schrader that you were  
21 a United States citizen?

22 A Yes, sir.

23 Q Was he helpful when you told him that?

24 A Not really.

25 Q What did he say to you?

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1 A He basically said that I have to just tell it to the  
2 judge and prove it.

3 Q All right. What about Mr. DeLong, did you inform him  
4 that you were a United States citizen?

5 A Yes, sir.

6 Q And how did he respond?

7 A The same way, sir.

8 Q What about Officer Gunther?

9 A The same way, sir.

10 Q And the female officer whose name you don't remember?

11 A The same way, sir.

12 Q Do you know if any of the deportation officers ever  
13 reported your claims to their superiors?

14 A No, sir.

15 Q Do you know if the deportation officers ever reported  
16 your claims to the Field Office Director?

17 A No, sir.

18 Q After you reported to the deportation officers that you  
19 were a U.S. citizen, were you interviewed by someone of higher  
20 authority to investigate your claim of citizenship?

21 A Say that again, sir.

22 Q Did anyone up the chain of command come in and interview  
23 you about your claim of U.S. citizenship?

24 A No, sir.

25 Q Did you ever give any sworn statements while at the

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1 Batavia or the Buffalo detention center, did they take any  
2 sworn statements about your claim of being a U.S. citizen?

3 A No, sir.

4 Q Do you know if the officers interviewed any of your  
5 family members about your claim of U.S. citizenship?

6 A No, sir.

7 Q No, they did not?

8 A No, they did not.

9 Q Did you tell other people at the Buffalo detention center  
10 that you are a U.S. citizen?

11 A I solely told the deportation officers.

12 Q Now, you know what an N-600 is, correct?

13 A Yes, sir.

14 Q You refer to that in Plaintiff's Exhibit 39?

15 A Yes, sir.

16 Q What is that, explain to the Court?

17 A It's an application for citizenship.

18 Q Turn to Exhibit 59, if you would please.

19 When you say an N-600 is an application, it's an  
20 application to receive a Certificate of Citizenship, correct?

21 A Yes, sir.

22 Q It's an application that demonstrates that you were  
23 indeed a U.S. citizen?

24 A Yes, sir.

25 Q Have you ever seen N-59 before or Plaintiff's 59, I'm

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1 sorry?

2 A Yes, sir.

3 Q What is that?

4 A This is the detainee request.

5 Q This is your detainee request while you were at Buffalo?

6 A Yes, sir.

7 MR. FLESSNER: Move to admit 59.

8 MR. MARUTOLLO: No objection.

9 THE COURT: Admitted.

10 (Plaintiff's Exhibit 59 so marked in evidence.)

11 Q All right. And look at the very top entry of the  
12 detainee request, the very first entry dated 6/26/08, do you  
13 see that?

14 A Yes, sir.

15 Q And that entry was inserted by Deportation Officer  
16 DeLong, correct?

17 A Yes, sir.

18 Q Read what your request was under Detainee Request.

19 A "Needs to file an N-600, believes he's a derived  
20 citizen."

21 Q So, Officer DeLong provided you with an application for  
22 an N-600, is that right?

23 A Yes, sir.

24 Q And it was filled out and sent in?

25 A Yes, sir.

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1 Q What ultimately happened with that request?

2 A Excuse me, sir?

3 Q What did USCIS do when you requested a Certificate of  
4 Citizenship?

5 A They denied it, sir.

6 Q Please turn to Exhibit 37.

7 Do you recognize Exhibit 37?

8 A Yes, sir.

9 Q What is it?

10 A This is the order of my N-600 application.

11 Q All right. Specifically turn to Bates Stamp US954.

12 Is that your application for Certificate of  
13 Citizenship?

14 A Yes, sir.

15 Q And then the pages prior to that are the decision by  
16 USCIS, correct?

17 A Yes, sir.

18 Q Who filled out this application for you?

19 A My stepmom.

20 Q And do you see --

21 MR. FLESSNER: Move to admit 37, Your Honor.

22 MR. MARUTOLLO: No objection.

23 THE COURT: Admitted.

24 (Plaintiff's Exhibit 37 so marked in evidence.)

25 Q Do you see that your application was denied on August 4

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1 of 2008?

2 A Yes, sir.

3 Q Do you know why your request was denied?

4 A They stated that I was not in my father's custody at the  
5 time.

6 Q At the time of what?

7 A Of my claim for citizenship.

8 Q What did you do after you received the denial of your  
9 Certificate of U.S. Citizenship?

10 A I appealed it, sir.

11 Q Turn to Exhibit 6.

12 Do you see Exhibit 6?

13 A Yes, sir.

14 Q Do you recognize it?

15 A Yes, sir.

16 Q What is it?

17 A This is my appeal.

18 Q Appeal of what?

19 A Of the N-600 application.

20 Q Okay. Did you prepare this?

21 A Yes, sir.

22 Q And it's dated 9/23 of '08, correct?

23 A Yes, sir.

24 MR. FLESSNER: Move to admit 6.

25 MR. MARUTOLLO: I believe it's already in evidence,

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1 Your Honor, but no objection.

2 MR. FLESSNER: Okay.

3 THE COURT: Admitted.

4 (Plaintiff's Exhibit 6 so marked in evidence.)

5 Q What was the decision that the Administrative Appeals  
6 Office gave regarding your appeal of the denial of your  
7 Certificate of Citizenship?

8 A It was denied.

9 Q Turn to Exhibit 12 please.

10 Do you recognize this document?

11 A Yes, sir.

12 Q Is this the Administrative Appeals Office's decision  
13 affirming the denial of your Certificate of Citizenship?

14 A Yes, sir.

15 MR. FLESSNER: Move to admit 12.

16 MR. MARUTOLLO: No objection.

17 THE COURT: Admitted.

18 (Plaintiff's Exhibit 12 so marked in evidence.)

19 Q During this entire time you were in proceedings to be  
20 removed from the country, right?

21 A Yes, sir.

22 Q How did the immigration judge rule in your removal  
23 proceedings?

24 A He denied my claims as a United States citizen and  
25 ordered me removed.

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1 Q Look at please Exhibit 1, Plaintiff's Exhibit 1.  
2 Is this a transcript from your removal hearing?

3 A Yes, sir.

4 MR. FLESSNER: Move to admit 1.

5 MR. MARUTOLLO: No objection, Your Honor.

6 THE COURT: Admitted.

7 MR. MARUTOLLO: I'm sorry, Your Honor, the plaintiff  
8 had admitted previously Exhibit 13 or 12.

9 MR. FLESSNER: 12.

10 THE COURT: 12.

11 MR. FLESSNER: Did I do the wrong one?

12 MR. MARUTOLLO: Because Exhibit 12 doesn't relate to  
13 this plaintiff.

14 (Pause while counsel confer.)

15 MR. FLESSNER: I need to correct a number, just a  
16 second, Your Honor.

17 MR. MARUTOLLO: I think the corrected is Exhibit 78.

18 I believe the corrected is Exhibit 78, and if we'd  
19 just have Plaintiff's Exhibit 12 withdrawn, to the extent it  
20 was in evidence.

21 MR. FLESSNER: That's correct, 78 should be in place  
22 of 12, I apologize.

23 THE COURT: All right. 12 is withdrawn, 78 is  
24 admitted.

25 (Plaintiff's Exhibit 78 so marked in evidence.)

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1 Q Looking at Plaintiff's 1, please.

2 THE COURT: 1 is admitted.

3 (Plaintiff's Exhibit 1 so marked in evidence.)

4 Q Turn to Bates stamp number 1US000473. It's almost to the  
5 end of the document.

6 A Yes.

7 Q All right. At the top of the page there's a: Judge  
8 renders oral decision, do you see that?

9 A Yes, sir.

10 Q Read the first paragraph under Judge to Mr. Watson: Sir,  
11 you heard my decision; read that paragraph for us.

12 A "Sir, you heard my decision. Basically it is my belief  
13 that the BIA's most recent decision in the matter of Hines is  
14 controlling and that you are not a U.S. citizen. Now, under  
15 the immigration laws you have the absolute right to appeal my  
16 decision to a higher court, to that very Board of Immigration  
17 Appeals."

18 Q Did you in fact file a notice of appeal?

19 A Yes, sir.

20 Q And how did you know how to do that?

21 A The judge gave me the documents, so ordered the  
22 government to give me the documents, sir.

23 Q Did you do this all on your own?

24 A No, sir.

25 Q Did you have a lawyer?

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1 A No, sir.

2 Q So, you and other inmates were able to work on it?

3 A Correct, sir.

4 Q Okay. Turn to Plaintiff's Exhibit 9, if you would,  
5 please. Do you recognize Plaintiff's Exhibit 9?

6 A Yes, sir.

7 Q What is it?

8 A It is notice of appeal from a decision of the immigration  
9 judge.

10 Q Is this the one you prepared?

11 A Yes, sir.

12 MR. FLESSNER: Move to admit 9.

13 MR. MARUTOLLO: No objection.

14 THE COURT: Admitted.

15 (Plaintiff's Exhibit 9 so marked in evidence.)

16 Q Is this the form that the immigration judge gave you to  
17 fill out?

18 A Yes, sir.

19 Q And looking through that, there's exhibits on it, are  
20 those your signatures?

21 A Yes, sir.

22 Q And looking at the very last page of it, it appears that  
23 there's a copy of a letter mailed to the Board of Immigration  
24 Appeals, is that right?

25 A Yes, sir.

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1 Q Look at 10 please, the following page of the following  
2 exhibit. Do you recognize that?

3 A Yes, sir.

4 Q What is it?

5 A It's my appeal brief.

6 Q Is that your signature on the last page of that document?

7 A Yes, sir.

8 Q Did you prepare that brief?

9 A Yes, sir.

10 MR. FLESSNER: Move to admit 10.

11 MR. MARUTOLLO: No objection.

12 THE COURT: Admitted.

13 (Plaintiff's Exhibit 10 so marked in evidence.)

14 Q Turn your attention to 11; do you recognize 11?

15 A Yes, sir.

16 Q What is it?

17 A It's the copy of the board of immigration's decision,  
18 sir.

19 Q Ordering you to be removed?

20 A Yes, sir.

21 Q Did you receive a copy of this decision?

22 A No, sir.

23 Q Why not?

24 A I believe that the court had failed to mail me the  
25 decision on time.

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1 Q How did you learn that they had ordered you removed?

2 A Excuse me, sir?

3 Q When did you eventually learn that they ordered you  
4 removed?

5 A I don't recall.

6 Q Do you remember how you learned that?

7 A I don't remember, sir.

8 Q Okay.

9 MR. FLESSNER: Move to admit 11.

10 MR. MARUTOLLO: No objection.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit 11 so marked in evidence.)

13 Q Did you take any action to appeal this decision?

14 A Say that again, sir.

15 Q Did you take any action to appeal this decision?

16 A I don't understand that question, sir.

17 Q Did you appeal to the Second Circuit to review the  
18 decision of the BIA?

19 A Yes, I did, sir.

20 Q All right. Look at 13, if you would please. Do you  
21 recognize 13?

22 A Yes, sir.

23 Q What is it?

24 A It's my petition for review.

25 Q To the Second Circuit?

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1 A Yes, sir.

2 Q Who wrote at the top there DO Gunther, do you recognize  
3 that?

4 A Yes, sir.

5 Q Whose writing is that?

6 A I believe it's mine, sir.

7 Q Did you provide this with Officer Gunther?

8 A Yes, sir.

9 MR. FLESSNER: Move to admit 13.

10 MR. MARUTOLLO: No objection.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit 13 so marked in evidence.)

13 Q What happened to your petition for review?

14 A It was granted, sir.

15 Q Well, it was initially denied, is that right?

16 A Yeah, it was.

17 Q Turn your attention to Exhibit 45, if you would.

18 THE COURT: What is this one please?

19 MR. FLESSNER: 45.

20 Q Do you recognize Exhibit 45 -- well, let me just say  
21 this, is this a copy of --

22 A Yes, yes, I'm sorry.

23 Q Go ahead.

24 A This is the decision from the Second Circuit court for a  
25 stay of removal.

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1 Q And they were reinstating your petition to review,  
2 correct?

3 A Yes, sir.

4 MR. FLESSNER: Move to admit 45.

5 MR. MARUTOLLO: No objection.

6 THE COURT: Admitted.

7 (Plaintiff's Exhibit 45 so marked in evidence.)

8 Q What ultimately happened to your case before the Second  
9 Circuit, do you remember?

10 A Before the Second Circuit, sir?

11 Q Yes.

12 A I'm not sure, I can't answer that.

13 Q Did the Second Circuit ultimately change its decision  
14 about your motion to review?

15 A Yes, sir.

16 Q What did they do?

17 A They appointed me a lawyer, sir.

18 Q And where were those lawyers from?

19 A NIJC, National Immigration Justice Center.

20 Q Did you have lawyers from Gibson Dunn?

21 A Yes, sir, I'm sorry, yes.

22 Q And those lawyers were appointed by the Second Circuit?

23 A Yes, sir.

24 Q To assist you in the review of your removal order,  
25 correct?

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1 A Yes, sir.

2 Q Did the Second Circuit eventually remand the case to the  
3 BIA?

4 A Yes, sir.

5 Q Did the BIA ultimately determine that you were to be  
6 released from custody?

7 A Yes, sir.

8 Q And was that on November 2nd of 2011?

9 A Yes, sir.

10 Q Tell the Court about that day, what happened?

11 A Well, I was in my housing unit and --

12 Q Where were you physically located again at that time?

13 A I was located in Etowah County which is in Alabama, sir.

14 Q All right. Tell the Court what happened.

15 A Well, I was in my cell and two of the officers approach  
16 me and said that I need to pack my stuff up and I asked why  
17 and --

18 THE COURT: Two officers; what officers, from --

19 THE WITNESS: From Etowah County.

20 THE COURT: Is it from the jail?

21 THE WITNESS: Yes, sir. And I asked why am I  
22 packing my stuff up and they said that they can't tell me why  
23 and all I remember was being brought to the processing area  
24 and I was just ushered out the door without any explanation.

25 Q Did you have any money?

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1 A No, sir.

2 Q Did you have a telephone?

3 A No, sir.

4 Q Did you know anyone in Alabama?

5 A No, sir.

6 Q What did you do?

7 A Well, at the time I was very close with a cousin of mine  
8 that resided in Florida, I called her and she booked a hotel  
9 for me that night online.

10 Q How were you able to call her if you didn't have a phone?

11 A Well, I was walking around in confusion and I met this  
12 white female at a gas station and I explained my situation,  
13 humbly asked her can I use her cell phone and she allowed me  
14 to.

15 Q Did you have your cousin's telephone number committed to  
16 memory?

17 A Yes, sir.

18 Q And so, did anybody in the ICE facility, did they give  
19 you any instruction as to what you should do in the middle of  
20 Alabama without any money or phone?

21 A No, sir.

22 MR. MARUTOLLO: Objection, leading, Your Honor.

23 Objection. I think the question was leading.

24 THE COURT: Overruled.

25 A No, sir, when I started asking questions I found out that

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1 the bus only -- the bus ran once per day and at that time upon  
2 my release it was already gone like three hours before so I  
3 was basically stranded.

4 THE COURT: We're adjourning for lunch, we'll be  
5 back at 2:00.

6 MR. FLESSNER: Thank you.

7 THE COURT: Thank you.

8 (Time noted: 12:45 p.m.)

9 (Luncheon recess taken.)

10 (Continued on next page.)

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WATSON/DIRECT/FLESSNER

1       AFTERNOON SESSION

2                     (In open court.)

3                     (Parties present.)

4                     THE COURT: All right. Continue, please.

5                     MR. FLESSNER: Thank you, your Honor.

6       DIRECT EXAMINATION

7       BY MR. FLESSNER:

8       (Continuing.)

9       Q       Mr. Watson, before we broke just before lunch, you were  
10      describing to us what happened when you were released from the  
11      Etowah Detention Facility in Alabama. You said you were able  
12      to make a phone call to your cousin in Florida and then what  
13      happened?

14      A       Well, she booked a hotel for me in the area that same  
15      night.

16      Q       And did you spend the night in Alabama?

17      A       Yes, I did.

18      Q       Is that a rural or a populated area where that facility  
19      is located?

20      A       It's a rural area.

21      Q       And you knew no one in the area?

22      A       No, sir.

23      Q       How did you get back to New York?

24      A       Well, I contacted my parents and they booked a Greyhound  
25      ticket for me the next day.

WATSON/DIRECT/FLESSNER

1 Q Once you arrived in New York, where did you go to live?

2 A I went to live with my aunt.

3 Q All right. And did you seek employment after you were  
4 released from DHS custody?

5 A I did, but not right away.

6 Q Why is that?

7 A Because I didn't have any type of paperwork, so I was  
8 trying to figure out how would I be able to get a job.

9 Q Right. Let's just go back to living with your aunt.  
10 During the two years prior to receiving your Certificate of  
11 Citizenship, did you live with your aunt the entire time?

12 A No.

13 Q What did you do for living arrangements?

14 A Well, an ex-girlfriend of mine, I moved in with her, and  
15 that didn't work out. And, from that point, I was just  
16 bouncing around, you know, practically homeless.

17 Q Did you live with other people that you knew as well?

18 A Well, I wouldn't say living. I would sleep here at a  
19 friend's house and I did just, you know, that was basically  
20 the whole situation that I was unstable.

21 Q Why weren't you able to stay with your aunt the entire  
22 time?

23 A Well, there was agreement with my step mom that I would  
24 stay there. But after awhile I guess, you know, people get  
25 tired, you know? People get tired. I couldn't pay rent, I

WATSON/DIRECT/FLESSNER

1 couldn't do anything, and there was other people that were  
2 living in the basement that was very disruptive and it just  
3 didn't work out.

4 Q Did you have any income during that period of time?

5 A No.

6 Q Did you have any employment?

7 A No, sir.

8 Q Were you eligible to receive any kind of government  
9 benefits?

10 A No, sir.

11 Q And why is that?

12 A Because, one, I didn't have any social security card; I  
13 didn't have any type of identification.

14 Q Would you describe you yourself as homeless during that  
15 period of time?

16 A Yeah.

17 Q Okay. During that period of time, did you suffer from  
18 addiction problems?

19 A Yes.

20 Q Were you able to recover from those issues?

21 A Yes.

22 Q How is that?

23 A I, on March 30th --

24 Q Of what year?

25 A Of this year.

WATSON/DIRECT/FLESSNER

1 Q Okay.

2 A I enrolled myself into a Christian inpatient treatment  
3 program called Anchor House.

4 Q All right. And what was the -- describe for the Court  
5 what Anchor House is?

6 A Anchor House is rehabilitation center. It's basically  
7 just to help you with your recovery, with your addiction, and  
8 also counseling.

9 Q Have you left this program?

10 A Yes, I did.

11 Q And when did you leave?

12 A I left a month ago.

13 Q Did you do that with the consent of your counselor?

14 A Yes, sir.

15 Q All right. Are you now drug free?

16 A Yes, sir. And may I state that I'm also, upon leaving  
17 Anchor House, I'm also in the outpatient program called New  
18 Direction which I goes to three times out the week.

19 Q That's after inpatient counseling?

20 A Yeah.

21 Q Now, I want to turn your attention to Exhibit 50. If  
22 you'll look and see if you have that, please. Plaintiff's  
23 Exhibit 50.

24 Do you recognize that document?

25 A Yes.

ANTHONY FRISOLONE, RDR, CRR

WATSON/DIRECT/FLESSNER

1 Q What is it?

2 A This is the decision of the Board of Immigration.

3 Q And that is the decision to terminate your proceedings?

4 A Yes, sir.

5 Q And what is the date of that decision?

6 A It says January 24, 2013.

7 Q All right. That's, approximately, 13 or 14 months after  
8 you were released from DHS custody; correct?

9 A Yes, sir.

10 MR. FLESSNER: Move to admit 50.

11 MR. MARUTOLLO: No objection.

12 THE COURT: Admitted.

13 (Government's Exhibit 50 was received in evidence as  
14 of this date.)

15 Q After BIA decided to terminate your immigration  
16 proceedings, were you issued a Certificate of Citizenship?

17 A Yes, sir.

18 Q When did that happen?

19 A I believe.

20 Q Well, let me help you. Look at Exhibit 82. Well, no.  
21 I'm sorry, we'll get to that in a second.

22 Do you remember approximately when they issued your  
23 Certificate of Citizenship?

24 A I believe it was January 2013.

25 Q All right. Look at 31, please. Do you recognize 31?

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q What is it?

3 A This is my naturalization certificate.

4 Q Do you see at the bottom the date that it was issued.

5 The 26th day of November 2013. Does that sound right to you?

6 A Yes, sir.

7 MR. FLESSNER: Move to admit 31.

8 MR. MARUTOLLO: No objection, your Honor.

9 THE COURT: Admitted.

10 (Government's Exhibit 31 was received in evidence as  
11 of this date.)

12 Q Did anyone from the Government come to you and offer to  
13 assist you with getting your certification of citizenship  
14 corrected?

15 A No, sir.

16 Q All right. Now, I want you to look at 82.

17 A (Complying).

18 Q You know who Mark Flemming is, don't you?

19 A Yes, sir.

20 Q That's that gentleman sitting right here; is that right?

21 A Yes, sir.

22 Q Do you recognize 82?

23 A Yes, sir.

24 Q Is that a letter which Mr. Flemming sent to AAO asking to  
25 reopen their denial of your N-600?

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q And that letter is dated May 28th of 2013?

3 A Yes, sir.

4 MR. FLESSNER: Move to admit 82.

5 MR. MARUTOLLO: No objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 82 was received in evidence as  
8 of this date.)

9 Q Look at 83, please. Is that also a letter dated June 7,  
10 2013, from Mr. Flemming to the field office director?

11 A Yes, sir.

12 Q Seeking them to expedite your -- the correction of your  
13 denial of your N-600 application?

14 A Yes, sir.

15 MR. FLESSNER: Move to admit 83.

16 MR. MARUTOLLO: No objection.

17 THE COURT: Admitted.

18 (Government's Exhibit 83 was received in evidence as  
19 of this date.)

20 Q Look at 84, please.

21 A (Complying).

22 Q Do you see 84?

23 A Yes, sir.

24 Q Is that a decision by the AAO to reopen your N-600  
25 denial?

WATSON/DIRECT/FLESSNER

1 A Yes, sir.

2 Q And that is dated August 22nd of 2013; correct?

3 A Yes, sir.

4 MR. FLESSNER: Move to admit 84.

5 MR. MARUTOLLO: No objection.

6 THE COURT: Admitted.

7 (Government's Exhibit 84 was received in evidence as  
8 of this date.)

9 Q Let's go back over 31. There's a couple of questions I  
10 want to ask you about 31 which I should have asked you.

11 A (Complying).

12 Q Looking at 31, do you see the date September 17, 2002,  
13 toward the bottom right-hand corner?

14 A Yes, sir.

15 Q That says you became a citizen of the United States on  
16 September 17, 2002?

17 A Yes, sir.

18 Q And that's an official document of the United States of  
19 America; correct?

20 A Yes, sir.

21 Q Look at 51, please. That looks to be the very first  
22 letter that Mr. Flemming sent to requesting that your N-600 be  
23 opened; is that right?

24 A Yes, sir.

25 Q And that's dated what?

WATSON/DIRECT/FLESSNER

1 A February 19, 2013.

2 MR. FLESSNER: Move to admit 51.

3 MR. MARUTOLLO: No objection.

4 THE COURT: Admitted.

5 (Government's Exhibit 51 was received in evidence as  
6 of this date.)

7 Q Have you suffered because the Government illegally  
8 detained you for three and a half years and then deprived of  
9 your Certificate of Citizenship for another two years?

10 A Yes.

11 MR. MARUTOLLO: Objection.

12 Q Explain to the Court how?

13 THE COURT: Well, instead of giving a conclusion  
14 just give the dates, please.

15 Q Explain to the Court what your unconstitutional detention  
16 and your failure to get a Certificate of Citizenship how that  
17 has affected your life?

18 MR. MARUTOLLO: Objection.

19 THE COURT: Reframe it without characterizing. Just  
20 give the dates.

21 Q How did your detention and failure to get your  
22 Certificate of Citizenship for another two years affect your  
23 life?

24 A Well, due to the fact I couldn't find work, I started  
25 just losing hope and faith and I was just very depressed; and

WATSON/CROSS/MARUTOLLO

1 so, I turned to drugs to help, you know, I think drugs is  
2 going to help.

3 I started losing myself self-worth. I started in a  
4 downward spiral and being very antisocial, I wouldn't hang  
5 around family which became a major problem, and just got  
6 depressed. I have reckless behavior.

7 Q And did the counseling at Anchor House assist you in  
8 coming out of that depression?

9 A Yes. Yes, they did.

10 MR. FLESSNER: One second, your Honor.

11 (A brief pause in the proceedings was held.)

12 MR. FLESSNER: No further questions.

13 CROSS-EXAMINATION

14 BY MR. MARUTOLLO:

15 Q Good afternoon, Mr. Watson.

16 A Good afternoon, sir.

17 Q Mr. Watson, you were you were born in Jamaica; correct?

18 A Yes, sir.

19 Q Your biological parents were Hopeton Watson and Darette  
20 McFarland?

21 A Yes, sir.

22 Q Your biological parents were not married at the time of  
23 your birth; correct?

24 A No, sir.

25 Q No, they were not married?

WATSON/CROSS/MARUTOLLO

1 A No, they were not married, sir.

2 Q And your biological parents never got married; right?

3 A No, they never got married, sir.

4 Q Your father naturalized as a U.S. citizen on  
5 September 17, 2002; right?

6 MR. FLESSNER: Your Honor.

7 THE WITNESS: Yes, sir.

8 MR. FLESSNER: We stipulated to all of this. This  
9 is all in the record.

10 THE COURT: I'll allow it.

11 Q And Mr. Watson you turned 18 on November 17, 2002?

12 A November 17, 2002?

13 Q You turned 18 on November 17, 2002?

14 A Yes, sir.

15 MR. MARUTOLLO: May I have one moment, your Honor.

16 (A brief pause in the proceedings was held.)

17 Q Now, Mr. Watson, you don't recall if you spent any time  
18 in jail between September 2002 and November 2002; correct?

19 A No, sir.

20 Q No, you don't recall if you spent any time in jail  
21 between September 2002 and November 2002?

22 A I don't recall.

23 Q And you don't recall if you were in your father's custody  
24 between September 2002 and November of 2002; right?

25 A I wasn't in his custody, sir.

WATSON/CROSS/MARUTOLLO

1 Q Now, Mr. Watson, you pled guilty to at the same timed  
2 robbery in the second degree on November 23, 2004; right?  
3 A Yes, sir.

4 Q And you pled guilty to attempted criminal sale of cocaine  
5 in the third degree on September 18, 2007; right?  
6 A Yes, sir.

7 Q You were sentenced to a term of three and a half years  
8 imprisonment; correct?  
9 A Yes, sir.

10 Q And you've also been convicted of two other misdemeanors,  
11 right, separate and apart from the attempted criminal sale of  
12 cocaine and the attempted robbery?

13 A Yes, sir.

14 Q Now, on direct examination, you testified that you were,  
15 I believe, you said a new man after you got out shock  
16 incarceration program, right?

17 A Yes, sir.

18 Q But despite being in custody for a number of years in the  
19 2000s, you still never get your GED during that period; right?  
20 A During the period that I was incarcerated, sir?

21 Q In state custody.

22 A There was no GED available, sir.

23 Q So you're saying that when you were in state custody  
24 there was no way for you to get a GED in the New York State  
25 Department of Corrections system?

WATSON/CROSS/MARUTOLLO

1 A Sir, may I say that by the time that I was in Lake View  
2 Shock that I tried to obtain my GED, but because I graduated I  
3 didn't have time to obtain it.

4 Q So you didn't obtain your GED?

5 A No.

6 Q During the time you were in state custody; right?

7 A No, sir.

8 Q Now, Mr. Watson, according to you, you did not use  
9 cocaine at any point prior to 2012; right?

10 A Correct.

11 Q But following your conviction in 2007, you were  
12 interviewed by the New York City Department of Probation;  
13 right?

14 A Yes, sir.

15 Q And you told them that you were addicted to cocaine since  
16 the age of 13; right?

17 A Yes, sir.

18 Q And that wasn't true; right?

19 A Nos.

20 Q So you lied to the probation officer?

21 A Yes, sir.

22 Q And you lied because other people told to you say that;  
23 right?

24 A Yes, sir.

25 Q Now, Mr. Watson, you met with an ICE officer at Downstate

WATSON/CROSS/MARUTOLLO

1 Correctional Facility on or about October 9, 2007; right?

2 A Yes, sir.

3 Q And you told the ICE officer that you were not a  
4 U.S. citizen; right?

5 A Sir, I told him that I was a U.S. citizen.

6 Q All right. Let me call your attention to your deposition  
7 in this case you had your deposition taken on September 8,  
8 2015; right?

9 A Yes, sir.

10 Q And, at that deposition, you were asked questions?

11 A Yes, sir.

12 Q And you were given answers to those questions?

13 A Yes.

14 Q Okay. Let me turn your attention to -- or turn counsel's  
15 attention to pages.

16 MR. FLESSNER: What exhibit was that?

17 MR. MARUTOLLO: This was the plaintiff's deposition  
18 transcript from --

19 MR. BURNS: Is it in your exhibit book?

20 MR. MARUTOLLO: It's for impeachment purposes.

21 MR. FLESSNER: I see no need for that.

22 Q It's on Page 24, lines 12 through 14. I'll read it into  
23 the record.

24 Okay. Did you give the following answer to the  
25 following question, Mr. Watson, this Page 24, lines 12 through

WATSON/CROSS/MARUTOLLO

1 14.

2 "QUESTION: What did you say to him."

3 "ANSWER: I told him is that I wasn't a  
4 United States citizen."

5 Did you give that answer to that question at your  
6 deposition?

7 A No, sir.

8 Q So even though it's written in your deposition transcript  
9 that's not correct?

10 A No, sir.

11 Q Okay. Now, you did not provide anything about your  
12 parents to the officer on October 9, 2007, except for their  
13 telephone number; right?

14 A Yes, sir.

15 Q You did not provide your Lawful Permanent Resident Card  
16 to the ICE officer, did you?

17 A No, sir.

18 Q And, just so I'm clear, that's your Green Card?

19 A Yes, sir.

20 Q And, in fact, according to you, you believe that your  
21 Green Card had been stolen; right?

22 A Yes, sir.

23 Q But you had a Green Card issued to you prior to  
24 October 2007; right?

25 A Yes, sir.

WATSON/CROSS/MARUTOLLO

1 Q And, in October 2007, you knew that you were a lawful  
2 permanent resident; right?

3 A No, sir.

4 Q So even though you had a Green Card in October of 2007  
5 you didn't believe that you were after you lawful permanent  
6 resident?

7 A No, sir.

8 Q What did you believe you were though in October 2007?

9 A I was a citizen.

10 Q Even though you were still applying for a Green Card in  
11 2007?

12 A I was not applying for a Green Card in 2007, sir.

13 Q And you ultimately applied for a Green Card again in  
14 2012. Isn't that right, Mr. Watson?

15 A For the sole purpose of trying to get a job, sir. So,  
16 yes.

17 Q And a Green Card is for someone who is not a citizen of  
18 the United States; correct?

19 A Correct.

20 Q So when you said during the direct examination that you  
21 always knew you were a citizen as of September 17, 2002,  
22 that's not accurate, is it?

23 A It is accurate.

24 Q Even though you were applying for a card that indicates  
25 that you are not a United States citizen?

WATSON/CROSS/MARUTOLLO

1 A Sir, can I explain the reason why is that I went to apply  
2 for a Green Card was for the sole fact that I had no type of  
3 documentation. So if I had getting a Green Card then I could  
4 have went, used that to go get my social security, then get a  
5 New York State I.D. because I needed employment. That was the  
6 only reason why I went to apply for a Green Card because I was  
7 not granted my United States citizenship certificate.

8 Q Now, Mr. Watson, your parents mailed your father's  
9 Certificate of Naturalization to you; correct?

10 A Yes, sir.

11 Q They did not fax it to you, did they?

12 A Say that again, sir.

13 Q Your parents did not fax you your father's certificate of  
14 naturalization?

15 A They did fax it, sir.

16 Q All right. Let me turn your attention to your deposition  
17 Page 26, Lines 14 through 18.

18 Did you give the following answers, Mr. Watson to  
19 the following questions?

20 "QUESTION: And how did you obtain your father's  
21 citizenship papers."

22 "ANSWER: It was mailed to me."

23 "QUESTION: By who?"

24 "ANSWER: By my parents."

25 Did you give those answers to those questions?

ANTHONY FRISOLONE, RDR, CRR

WATSON/CROSS/MARUTOLLO

1 A Yes, sir.

2 Q So now that you're at trial and you realize that the fax  
3 date is significant, you changed your answer; right?

4 A Well, sir, at the time, like I said, I forgot a lot of  
5 stuff. I knew that my parents had sent to it me, I didn't  
6 remember whether it was faxed or by mail, but I just thought  
7 it was by mail.

8 Q Now, Mr. Watson, you received your father's certificate  
9 of naturalization in June of 2008; right?

10 A Say that again, sir.

11 Q You received your father's certificate of naturalization  
12 in June of 2008; correct?

13 A Yes, sir.

14 Q And you gave that certificate to ICE agents; right?

15 A Yes, sir.

16 Q And as shown during your direct examination, Plaintiff's  
17 Exhibit 39, you actually gave your father's certificate of  
18 naturalization to ICE agents on July 14, 2009; right?

19 A I gave them the certificate.

20 Q July 14, 2008, let me just be clear on that for the  
21 record. You gave the ICE agents your father's certificate of  
22 naturalization on July 14, 2008; correct?

23 A I don't remember.

24 Q Can you look at Plaintiff's Exhibit 39?

25 A (Complying). Yes.

ANTHONY FRISOLONE, RDR, CRR

WATSON/CROSS/MARUTOLLO

1 Q If you look at the top right-hand corner -- this is all  
2 in evidence -- the top right-hand corner of Plaintiff's  
3 Exhibit 39 is dated July 14, 2008; correct?

4 A Yes, sir.

5 Q Okay. Now, Mr. Watson you didn't fax your father's  
6 certificate to ICE, did you? You, yourself, didn't fax any  
7 document to ICE agents, did you?

8 A No, sir.

9 Q Mr. Watson, during your entire ICE detention, no  
10 probation officer prevented you from filing any legal document  
11 pertaining to your ICE detention; correct?

12 A Nos.

13 Q No, they did not prevent you?

14 A No, they did not.

15 Q Now, Mr. Watson, prior to being arrested for the  
16 attempted criminal sale of cocaine, you were making \$8.50 an  
17 hour; correct?

18 A Yes, sir.

19 Q So your most recent job prior to being in ICE custody was  
20 for \$8.50 an hour; right?

21 A Yes, sir.

22 Q And according to you?

23 THE COURT: What date was that?

24 MR. MARUTOLLO: The date that he entered -- is that,  
25 I guess, was sentenced for his state incarceration, so it

WATSON/CROSS/MARUTOLLO

1 would have been --

2 MR. FLESSNER: 2007.

3 MR. MARUTOLLO: It would have been in 2007 at some  
4 point.

5 MR. FLESSNER: I believe.

6 MR. MARUTOLLO: I believe, your Honor, it's on the  
7 certificate of disposition.

8 THE COURT: I just wondered what the rate base was  
9 at that time.

10 EXAMINATION BY

11 MR. MARUTOLLO:

12 (Continuing.)

13 Q Now, Mr. Watson, according to you, after your release  
14 from ICE detention, applying for a job right away was the  
15 further thing from your mind; right?

16 A Yes, sir.

17 Q And, according to you, you were not employed anywhere  
18 between November 2, 2011, and 2013; right?

19 A Yes, sir.

20 Q And all you did during this period was go to  
21 Planet Fitness gym constantly; right?

22 A Incorrect.

23 Q You went to Planet Fitness gym constantly during there  
24 period of time, didn't you?

25 A At some point.

WATSON/CROSS/MARUTOLLO

1 Q And, at this point, you testified on direct examination  
2 that you were homeless; right?

3 A Yes, sir.

4 Q But actually you were living at your aunt's home from  
5 2011 through 2013; right?

6 A No, sir.

7 Q So let me turn your attention to your deposition  
8 transcript. Page 87, lines 22 through 88/4.

9 Mr. Watson did you give the following answer to the  
10 following question:

11 "QUESTION: So how were supporting yourself from  
12 2011 to 2013?"

13 "ANSWER: I couldn't. I mean, I was living at my  
14 aunt's house, so, at that time, and well earlier. My aunt,  
15 she provided me food. Friends helped out whenever I need a  
16 buck or two and that was about it."

17 Did you give those answers to those questions?

18 A Yes, sir.

19 Q So you were, in fact, living in a home during that  
20 period?

21 A I was moving in about, sir.

22 Q Now, Mr. Watson you claim you were that you were ejected  
23 from a program at a Bronx University because you had no,  
24 according to you, work papers?

25 A Yes, sir.

WATSON/CROSS/MARUTOLLO

1 Q But besides this one company, this one program at the  
2 Bronx University, no other potential employers told you that  
3 you could not work because you did not have the appropriate  
4 legal paperwork; right?

5 A No, sir.

6 Q No, as in no one else told you that; right?

7 A No one else told me that.

8 Q And, in fact, between 2011 and 2013, you did not apply to  
9 any other companies or any other places of employment in order  
10 to obtain a job; right?

11 A Correct, sir.

12 Q So, actually, you have no idea if your immigration status  
13 affected your ability to get a job, do you?

14 A I do, sir.

15 Q Well, no prospective employer told you that you could not  
16 obtain a job due to your immigration status; right?

17 A No, sir.

18 Q No, as in no prospective employer told you?

19 A No prospective employer told me that, sir.

20 Q That you could obtain a job due to your immigration  
21 status?

22 A Yes, sir.

23 Q And you're not aware of any employer calling immigration  
24 officials to check on your status; right?

25 A No, sir.

ANTHONY FRISOLONE, RDR, CRR

WATSON/CROSS/MARUTOLLO

1 Q Ultimately, no prospective employers ever told you that  
2 you could not obtain a job with them because you're not a  
3 U.S. citizen; right?

4 A No, sir.

5 Q No, no one told you that; right?

6 A No one told me that, sir.

7 Q In reality, Mr. Watson, it was your previous criminal  
8 convictions that were the obstacle in obtaining your  
9 employment; right?

10 A No, sir.

11 Q Well, Mr. Watson, let's look at the facts. You applied  
12 far a job with the Javits Center but were rejected because of  
13 your criminal history; correct?

14 A Yes, sir.

15 Q And you claimed that you were not able to work before  
16 receiving your Certificate of Citizenship in 2013; right?

17 A Yes, sir.

18 Q But by January of 2013 you had a decision by the BIA  
19 recognizing your status as a citizen; right?

20 A Yes, sir.

21 Q And you're not claiming any lost job earnings in this  
22 case, are you?

23 A No, sir.

24 Q No, you're not claiming any lost job earnings?

25 A No, I'm not claiming the lost job earnings, sir.

ANTHONY FRISOLONE, RDR, CRR

WATSON/CROSS/MARUTOLLO

1 Q Now, after the BIA terminated the removal proceedings  
2 against you on January 24, 2013, you claim that there was no  
3 way for you to obtain proof of citizenship; correct?

4 A Repeat that question again.

5 Q After the Board of Immigration Appeals terminated the  
6 removal proceedings against you on January 24, 2013, you claim  
7 that there was no way for you to obtain proof of citizenship;  
8 right?

9 A Yes, sir.

10 Q But after your release from custody in 2011, you did  
11 obtain a New York temporary state identification card;  
12 correct?

13 A That was in 2011, sir.

14 Q Can you turn your attention to Exhibit PP. Defendant's  
15 Exhibit PP.

16 A Got it.

17 Q Let me just clarify, Mr. Watson. Your New York State  
18 identification case card was issued to you on August 20, 2012;  
19 correct?

20 A Yes, sir.

21 Q Now, looking at Exhibit PP, that's your New York State  
22 license, your New York State identification card; correct?

23 A It's a temporary identification card, sir.

24 MR. MARUTOLLO: Your Honor, we would move  
25 Government Exhibit PP into evidence.

ANTHONY FRISOLONE, RDR, CRR

WATSON/CROSS/MARUTOLLO

1 THE COURT: Admitted.

2 (Government Exhibit PP was marked in evidence as of  
3 this date.)

4 EXAMINATION BY

5 MR. MARUTOLLO:

6 (Continuing.)

7 Q Mr. Watson, you also received of a government EBT card  
8 for Snap Assistance in 2012; right?

9 A Yes, sir.

10 Q So you had two separate government identification cards  
11 in 2012; right?

12 A Yes, sir.

13 Q And you never applied for a U.S. passport; right?

14 A No, sir.

15 Q Even though a U.S. passport would have provided you with  
16 proof of citizenship; right?

17 A Yes, sir.

18 Q And you did not apply for a U.S. social security card  
19 until 2013; right?

20 A Yes, sir.

21 Q And, Mr. Watson, when you tried to reopen your N-600  
22 application for citizenship, you sought to applied paying fees  
23 for the application; right?

24 A Say that again, sir.

25 Q Were you tried to reopen your N-600 application, you

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1 sought to avoid paying fees for the application; correct?

2 A Correct, sir.

3 Q Even though the fees were required; right?

4 A Correct, sir.

5 MR. MARUTOLLO: Your Honor, we'd like to enter into  
6 evidence a number of exhibits that I believe have been -- I  
7 don't believe there's any objection to from the plaintiffs,  
8 but I'll go through them one by one.

9 MR. FLESSNER: I think all of this is stipulated.  
10 There are many exhibits that both sides agree should be  
11 entered into so we should try to figure out a way just to make  
12 them all happen at once.

13 Don't we have a list of all that?

14 MR. MARUTOLLO: We do. To be quite honest with you,  
15 the plaintiffs have filed an updated and we weren't able to  
16 have all our objections on that list and that was filed with  
17 the Court, it was filed over the weekend. I still think it  
18 might make sense to go through one by one. If the plaintiff  
19 would like to stipulate to all of defendant's exhibits coming  
20 into evidence that's fine by us.

21 MR. FLESSNER: That's not what I said. I think  
22 there is a joint list that a group of exhibits that everyone  
23 agrees to should be admitted.

24 THE COURT: Well, do you have it.

25 MR. FLESSNER: It was filed with the Court. We have

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1 it somewhere.

2 MR. MARUTOLLO: Your Honor, if you would like, I  
3 could go through the list to expedite matters.

4 THE COURT: Okay.

5 MR. MARUTOLLO: We would like to admit into evidence  
6 Government's Exhibits X -- I will read the letters, your  
7 Honor, that we provided you with a copy. X, Y, Z, AA, CC, DD,  
8 EE, HH, II, LL, MM, NN, PP, QQ, RR, and SS. I don't believe  
9 there's any objections to those when we filed our list.

10 THE COURT: All right. Admitted.

11 (Defendant's Exhibits X, Y, Z, AA, CC, DD, EE, HH,  
12 II, LL, MM, NN, PP, QQ, RR, and SS were marked in evidence as  
13 of this date.)

14 MR. MARUTOLLO: May I have one moment, your Honor.

15 (A brief pause in the proceedings was held.)

16 MR. MARUTOLLO: No further questions, your Honor.

17 THE COURT: Redirect.

18 MR. FLESSNER: I have no redirect, your Honor. The  
19 only thing I'd like to.

20 THE COURT: Step down, sir.

21 (Witness leaves the witness stand.)

22 MR. FLESSNER: I would just like to point out. We  
23 have a trial exhibit list and almost all of them are not  
24 objected to, so we move to the admission of all those that are  
25 not objected to and then we can discuss the ones that the

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1 Government has objections to.

2 MR. MARUTOLLO: Your Honor, we would just note we  
3 didn't have an opportunity to object to some of those exhibits  
4 because they were filed after the filing deadline.

5 THE COURT: They don't want to do it this way. Do  
6 it in any way that conveniences you.

7 MR. FLESSNER: We'll give the Government a chance to  
8 go over the ones that they still have not yet reviewed. There  
9 are only a couple on here but do you want more time to go  
10 through this.

11 MR. MARUTOLLO: Your Honor, respectfully, the  
12 deadline was last an updated list was submitted with totally  
13 different numbers and letters on Friday.

14 THE COURT: Take your time. There's no point  
15 quibbling over that.

16 MR. FLESSNER: I agree. So with the exception of  
17 getting the all of our exhibits in, we have no further  
18 evidence at this time. So we reserve the right to work with  
19 the Government to admit our exhibits with which they have no  
20 objection. And then the Court could view on the ones which  
21 they have objection.

22 MR. MARUTOLLO: That's fine, your Honor.

23 THE COURT: Okay. We'll do that Wednesday.

24 MR. MARUTOLLO: Your Honor, at this time --

25 THE COURT: Did you want to move?

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1                   MR. MARUTOLLO: Yes, your Honor, we would like to  
2 move pursuant to Rule 52.

3                   We believe, your Honor, that the Government is  
4 entitled to judgment as a matter of law under Rule 52 as the  
5 plaintiff has not set forth a legally sufficient evidentiary  
6 basis for either his false imprisonment or his negligence  
7 claim under the FTCA.

8                   First, your Honor, plaintiff's claim are barred by  
9 the Due Care Exception which states at that the FTCA sovereign  
10 immunity waiver shall not apply to any claim based on acts or  
11 omission of an employee of the Government exercising due care  
12 in the execution of the statute.

13 As set forth in our findings of fact and conclusions of law,  
14 the federal standard for due care is one of reasonableness.

15 As long as the Government actor's actions are reasonable and  
16 undertaken while reasonably executing the mandates of the  
17 statute 2680(a) serves to bar litigants' claims.

18 A recent case, your Honor, provides a lot of guidance to the  
19 case at bar out of the Southern District.

20 In Nwozuzu v. United States as cited to in our briefs, the  
21 plaintiff alleged unlawful detention after he was detained in  
22 immigration custody for 480 days after being convicted of  
23 aggravated felonies. At the time of his detention, government  
24 officials believed that he was an alien but it was later  
25 determined that he actually derived U.S. citizenship. The

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1 Court ruled that the Due Care Exception acted as a  
2 jurisdictional bar to the plaintiff's case.

3 THE COURT: Do you have that case?

4 MR. MARUTOLLO: Yes, your Honor.

5 THE COURT: I have a copy of it.

6 MR. MARUTOLLO: Yes, we do, your Honor.

7 THE COURT: I would like to take a look at it.

8 Please, stop for a moment while I look at it.

9 MR. MARUTOLLO: Here you go. I am walking up the  
10 Nwozuzu.

11 MR. FLESSNER: Can we get a citation, please.

12 MR. MARUTOLLO: Sure it's 14-CV-8589 and the WestLaw  
13 citation is 2015 WestLaw 48657772. It's from August 12th of  
14 this year, your Honor, in the Southern District.

15 THE COURT: The Court rejected the argument of the  
16 Government that 8 U.S.C. Section 1252(g) barred the suit.

17 MR. MARUTOLLO: Your Honor, that was the first point  
18 the Government had made. We have actually not made that  
19 argument in this case.

20 THE COURT: I understand. I agree with the judge.

21 (A brief pause in the proceedings was held.)

22 THE COURT: This was decided August 12, 2015, an  
23 opinion and order by District Judge Lorna G. Schofield.  
24 S-c-h-o-f-i-e-l-d.

25 (Continued on the next page.)

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1                   THE COURT: The opinion says the Second Circuit does  
2 not address the issue, but may soon do so in *Lora, L-O-R-A*  
3 *versus Shanahan, S-H-A-N-A-H-A-N*. Has that been decided yet?

4                   MR. MARUTOLLO: Not to my knowledge, Your Honor.

5                   THE COURT: All right. It's an interesting opinion.  
6 I simply don't agree with it.

7                   MR. MARUTOLLO: Your Honor, we would also cite to a  
8 case that we relied on. We relied on obviously a number of  
9 cases in our brief, but another major case that we cited to is  
10 the Akran case, *Akran versus U. S.*, 997, F. Supp. 2d 197,  
11 2014, out of the Eastern District from the Judge Vitaliano.

12                  Eloquently in both cases, in *Nwozuzu* and *Akran*,  
13 immigration officials acted with due care because their agents  
14 followed the law as understood by the agency tasked with  
15 interpreting it. Immigration officials reasonably believed  
16 the plaintiff was removable due to his conviction covered by  
17 statute.

18                  THE COURT: May I see that case, please?

19                  MR. MARUTOLLO: That's *Akran*, A-K-R-A-N.

20                  MR. FLESSNER: What was the page on that?

21                  THE COURT: Godson, G-O-D-S-O-N, middle initial O,  
22 *Akran*, A-K-R-A-N, 997 F. Supp. 2d 197, decided February 4th,  
23 2014.

24                  Now, this is distinguishable, the court says that on  
25 his initial detention, *Akran*'s immigration records

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1 collectively did not establish his citizenship.

2 MR. MARUTOLLO: We would submit, Your Honor, in this  
3 case --

4 THE COURT: That's at -- in the concluding page. I  
5 don't think the facts are apparently not as strong as they are  
6 in the present case.

7 MR. MARUTOLLO: Your Honor, we would argue that  
8 based on the facts that were available to the government when  
9 they first detained him and in the course of his detention,  
10 the government acted reasonably in detaining him because they  
11 were following the statutory framework. They were exercising  
12 due care in applying the law, and following the determinations  
13 made by the immigration judge, Board of Immigration Appeals,  
14 the USCIS, the Administrative Appeals Office for the Second  
15 Circuit.

16 Additionally, Your Honor, and significantly,  
17 plaintiff's failure to call a single witness in his  
18 case-in-chief is evidence alone that his inability to show  
19 that the government's agents were acting without care. The  
20 agents here followed the law as understood by the agencies  
21 tasked with interpreting it, as well as initially what the  
22 Second Circuit believed.

23 Second, Your Honor, in addition to the due care  
24 argument, we believe that plaintiff's allegations are premised  
25 on claims again of intentional torts. And I -- although, I

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1 know Your Honor indicated earlier I believe he was indicated  
2 this was only a negligence case, to the extent there is still  
3 a false imprisonment case here, plaintiff's claims are barred  
4 by the intentional tort exception.

5 THE COURT: Well, I'm only trying this on  
6 negligence. Your motion to dismiss other causes of action  
7 will be dealt with in my opinion which will be released in a  
8 few days.

9 MR. MARUTOLLO: Okay, Your Honor. In light of that,  
10 we would still assert this argument. We would argue, again,  
11 ICE attorneys and judges are not law enforcement officials  
12 under the FTCA. Intentional tort claims predicated on the  
13 actions of ICE prosecutors fall outside of the FTCA's waiver  
14 of sovereign immunity are barred by statute.

15 Finally, Your Honor, the plaintiff here ultimately  
16 failed to establish a prima facie case of negligence and false  
17 imprisonment. Plaintiff's false imprisonment claim, for the  
18 reasons set forth in our briefs, including the arguments  
19 there and including the evidence here at trial, plaintiff  
20 failed to meet his burden, including his failure to show that  
21 plaintiff's detention was otherwise privileged.

22 Further, for the plaintiff's negligence claims and  
23 for the reasons, again, set forth in our briefs and through  
24 the evidence here at trial, plaintiff failed to meet his  
25 burden, including with respect to his claim that the

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1 government owed plaintiff a duty to expeditiously provide a  
2 Certificate of U. S. Citizenship, that any negligence arose  
3 out of an investigation. And the government, again, did not  
4 breach any duty owed to the plaintiff. And as a result, Your  
5 Honor, we ask for judgment in favor of the United States, as a  
6 matter of law.

7 THE COURT: Well, you may have an argument up to the  
8 time when they determined the appropriate parent, father.  
9 Apparently, they had the wrong name. Arguably, at that point,  
10 up to that point, they were making reasonable inquiries and  
11 they were misled. But upon determining who the proper father  
12 was, I don't see that your argument holds water. They should  
13 have at that point released him. When did they find out about  
14 the proper father?

15 MR. MARUTOLLO: They found out about the proper  
16 father, Your Honor, approximately June -- from defendants'  
17 perspective, from June of 2008. However, Your Honor, at that  
18 point --

19 THE COURT: From June of 2008, I think they were  
20 negligent in not following up.

21 MR. MARUTOLLO: Your Honor, we would just again  
22 submit that in order for an alien or suspected alien who's  
23 foreign-born, who's in the custody of ICE, in order for him to  
24 prove -- in order for him to be deemed a citizen, he has the  
25 burden of proof, even though again, here ultimately, he was

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1 ultimately determined to be a citizen. When he was first  
2 detained by ICE, he has the burden to prove that he is a  
3 U. S. citizen, and here --

4 THE COURT: Well, realistically, you have got a  
5 young man without a high school education, to place a  
6 sophisticated burden on him at this stage without any help  
7 that's useful from any governmental official, without an  
8 attorney, makes no sense to me.

9 Now, I believe that under the law, you don't have to  
10 furnish an attorney. I think that should not be the law, but  
11 apparently it is.

12 But to just standby woodenly and not investigate and  
13 say you have the burden, when he's writing these letters which  
14 seem to me to be fairly well written and sensible, it doesn't  
15 make any sense.

16 MR. MARUTOLLO: Your Honor, the key element that we  
17 want to emphasize here though is that even with the  
18 information about the correct Hopeton Watson, the correct  
19 father in this case, he still -- Mr. Davino Watson, the  
20 plaintiff, was not automatically a citizen. There were  
21 certain predicate factors that need to have been met and the  
22 plaintiff had the burden to show that.

23 And additionally, as you know, even set forth by  
24 plaintiff's own testimony and the items that -- the evidence  
25 that's in -- the exhibits that are in evidence right now,

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1 there were investigations that were conducted.

2 THE COURT: They were negligently conducted. We're  
3 dealing with a person who claims American citizenship, has  
4 indicia of American citizenship that's substantial, is  
5 incapable really of doing the legal work necessary, which  
6 turned out to be practically nonexistent once you got a lawyer  
7 in there, and you had a service that woodenly did nothing and  
8 said go prove it. I don't think that's an appropriate  
9 division of American law as it existed.

10 The motion to dismiss is denied. Whether I'm going  
11 to grant it as of the date when you determined who the proper  
12 father is, I'll have to have briefs on that. I'm not sure.

13 There are cases with respect to misidentifications I  
14 think in the criminal law. I've seen some of them in the  
15 police -- New York police cases. But here, they knew. They  
16 did nothing. They let this boy sit in a prison for years. I  
17 think we have higher standards in this country.

18 But you can brief it and I'll make findings of fact  
19 and law, if you're going to put in a case. Are you putting in  
20 a case?

21 MR. MARUTOLLO: We do, Your Honor. We do have  
22 witnesses.

23 THE COURT: Then put in your case.

24 MR. MARUTOLLO: Okay. Your Honor, we call  
25 Deportation Officer Erik Andren. He's in the hallway.

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1                   THE COURT: I expect you to brief thoroughly this  
2 advisory jury.

3                   MR. FLESSNER: I'm sorry? What did you say, Your  
4 Honor?

5                   THE COURT: The advisory jury issue, because our  
6 present intention is to call an advisory jury. I think I did  
7 that in the NAACP gun case. *National Association for the*  
8 *Advancement of Colored People v. Acusport Corporation*, 226 F  
9 Supp. 2d 391.

10                  MR. FLESSNER: Would you give us the case number  
11 again?

12                  MR. MARUTOLLO: Your Honor, I'm sorry. I don't  
13 think that your microphone may be on. Is it possible that  
14 your microphone is on? I didn't hear.

15                  THE COURT: I'll give you this.

16                  MR. MARUTOLLO: Okay. Thank you, Your Honor.

17                  THE WITNESS: And *Birnbaum*, 588, F 2d 319, Second  
18 Circuit, 1978, also one of my cases. It's okay to use an  
19 advisory jury, as long as the judge tries the case himself,  
20 which I'm doing here.

21                  I'm not troubled by the negligence problem. I think  
22 prima facie case has been made out. I'm troubled by the  
23 damages.

24                  So start putting on your case. Swear the witness.

25                  (Witness sworn.)

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1                   THE CLERK: Please have a seat. State your name and  
2 spell your last name for the record.

3                   THE WITNESS: My name is Erik Jason Andren,  
4 A-N-D-R-E-N.

5                   DIRECT EXAMINATION

6 BY MR. MARUTOLLO:

7 Q       Good afternoon, Mr. Andren. Are you currently employed?

8 A       Yes, I am.

9 Q       Where are you currently employed.

10 A      With Immigration and Customs Enforcement.

11 Q      And what is your current title?

12 A      Deportation officer.

13 Q      And how long have you been employed by ICE and INS legacy  
14 training?

15 A      Since 2002.

16 Q      And in October of 2007, what was your title?

17 A      Immigration Enforcement Agent.

18 Q      Have you received any legal training in your career?

19 A      I have.

20 Q      What legal training did you receive?

21 A      I was a -- prior to -- I have an associates in criminal  
22 justice. Prior to this job, I was a police officer. So I had  
23 an academy with the state of New York. I had an academy with  
24 this job and then I received on-the-job training throughout my  
25 career with ICE.

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1 Q Do you have any Criminal Alien Program experience?

2 A Yes, I do.

3 Q And so to be clear, what is the Criminal Alien Program?

4 A Its primary duty is to investigate reported foreign-born  
5 nationals who are currently incarcerated.

6 Q And what training did you receive for the Criminal Alien  
7 Program?

8 A It was on-the-job training with other agents who were  
9 seasoned already.

10 Q And I'm sorry. I know you mentioned earlier that you  
11 were an Immigration and Enforcement Agent in October of 2007.  
12 Would you have been considered a Senior Immigration  
13 Enforcement Agent at that time?

14 A My understanding is that the Senior Immigration  
15 Enforcement Agent would be someone who has reached a Grade 9,  
16 which was the highest grade that that position could reach,  
17 and at that time, I was a Grade 9.

18 Q What were your duties and responsibilities as a Senior  
19 Immigration Enforcement Agent?

20 A I would interview incarcerated suspected aliens who were  
21 incarcerated in the different correctional facilities.

22 Q Now, Mr. Andren, did you ever encounter an individual  
23 named Mr. Davino Watson?

24 A Yes.

25 Q In what capacity did you encounter Mr. Watson?

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1 A I interview Mr. Watson at the Downstate Correctional  
2 Facility.

3 Q How did you learn about Mr. Watson's case?

4 A He was referred to us by New York State Department of  
5 Corrections.

6 Q Do you know why he was referred to you or why the  
7 Department of Corrections referred Mr. Watson's case to you,  
8 ICE?

9 A Because he was born outside of the United States and he  
10 had been convicted of multiple felonies.

11 Q Now, Officer, what information was available to you in  
12 advance of the interview of Mr. Watson?

13 A We received a packet of information from the prison.  
14 Including in that packet is usually but not limited to  
15 fingerprints, photographs, a criminal history, pre-sentencing  
16 report, a conviction record of the current conviction, as  
17 well.

18 Q Now, did you review these documents in advance of meeting  
19 with Mr. Watson?

20 A Yes, I did.

21 Q And did you ever meet Mr. Watson?

22 A Yes.

23 Q When did you meet Mr. Watson?

24 A I believe it was on the 9th of October, 2007.

25 Q Where did you meet him?

WATSON/CROSS/MARUTOLLO

1 A At the Downstate Correctional Facility.

2 Q Now, as a foreign-born person with multiple felony  
3 convictions, what burden if any did Mr. Watson have to show  
4 that he was a U. S. citizen?

5 A The burden is entirely on him.

6 Q Now, would you still conduct an investigation even though  
7 there's a burden on him?

8 A Absolutely.

9 Q During this October 9th, 2007 meeting, what did you ask  
10 Mr. Watson?

11 A Mostly pedigree information: Name, date of birth,  
12 country of birth. I asked what country he believed he was a  
13 citizen of. I tried to get parent information, as well.

14 Q And why did you ask Mr. Watson questions about his  
15 parents?

16 A When parents naturalize, it can have an effect on their  
17 children.

18 Q How so?

19 A If all the circumstance are correct, the child can derive  
20 U. S. citizenship through naturalization of the parent.

21 Q So during this October 9th, 2007 meeting, what parent  
22 names if any did Mr. Watson provide you with?

23 A He gave me Hopeton Watson and Clare Watson.

24 Q Did Mr. Watson provide you with his parents' middle  
25 names?

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1 A No.

2 Q Did Mr. Watson tell you his parents' dates of birth?

3 A No.

4 Q Did Mr. Watson tell you his parents' age?

5 A No.

6 Q Did Mr. Watson tell you that he was a U. S. citizen?

7 A No.

8 Q Did Mr. Watson provide you a phone number for his  
9 parents?

10 A I did have a phone number for his parents, and more than  
11 likely, it was given to me by him.

12 Q Do you remember if you ever called that number?

13 A I don't remember.

14 Q In such an investigation, if you were to call a phone  
15 number of someone's parents and it went to voice mail or you  
16 couldn't get through, would you do anything further?

17 A I would call a different time of day.

18 Q After the interview on October 9th, 2007, did you conduct  
19 any searches to try to locate information about Hopeton and  
20 Clare Watson?

21 A I did.

22 Q How did you conduct these searches?

23 A I used our CIS database.

24 Q And what search fields are available in the CIS database?

25 A First and last name, date of birth. You can search you

WATSON/CROSS/MARUTOLLO

1 can search by sex, country of birth, FBI number, alien number.

2 Q Could you search by telephone number?

3 A No.

4 Q What information did you enter into the system to search  
5 for Hopeton Watson and Clare Watson?

6 A I use what we call a sounds-like search. When such  
7 limited information is given by a subject, to expand the  
8 search, use just a sounds-like on the name. And then I try to  
9 limit the responses I get by using sex and country of birth.

10 Q So if the were to search Hopeton Watson, you would search  
11 by what?

12 A Hopeton Watson in the sounds-like, and then I would use  
13 Jamaica as country of birth and for sex.

14 Q Now, why didn't you enter any other information in the  
15 database when you were searching for Hopeton Watson?

16 A I wasn't given any further information by the subject.

17 Q Now, after you typed in your search, did you receive any  
18 matches for a Hopeton Watson or a Clare Watson?

19 A Yes, one for each.

20 Q Did you believe that the names Hopeton Watson and Clare  
21 Watson that popped up in the system were plaintiff's parents?

22 A Yes, I did.

23 Q And why did you think that these were plaintiff's  
24 parents?

25 A I only got one hit back for each. And based on the

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1 information that the subject gave me, they fit.

2 Q Was there any indication as to where these individuals,  
3 where their country of origin was from?

4 A Yes. They were both born in Jamaica.

5 Q Was there any indication as to where these individuals  
6 were living?

7 A They were both in the New York area.

8 Q And did that further confirm your belief that these were  
9 Hopeton and Clare Watson --

10 A Yes.

11 Q -- the actual parents of plaintiff?

12 A Yes.

13 Q Now, at this stage of the proceedings, was there any way  
14 you could have obtained more information about Hopeton Watson  
15 and Clare Watson?

16 A If the subject had given me more information, yes.

17 Q To your knowledge, prior to June of 2008, did Mr. Watson  
18 provide you or anyone with ICE with Certificate of  
19 Naturalization for his father?

20 A To my knowledge, no.

21 Q To your knowledge, prior to June of 2008, did Mr. Watson  
22 provide you or anyone from ICE with a Certificate of  
23 Naturalization for his mother?

24 A No.

25 Q To your knowledge, prior to June of 2008, did Mr. Watson

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1 provide you or anyone from ICE with any affidavits or any  
2 other information about his parents?

3 A No, nothing.

4 Q To your knowledge, prior to June 2008, did anyone provide  
5 you or anyone else from ICE with any additional information  
6 about plaintiff's parents?

7 A No.

8 Q So okay. So now, after you did the search database --  
9 I'm sorry. While you're looking at the search database, could  
10 you access whether an individual had a Certificate of  
11 Naturalization on the search database?

12 A No.

13 Q So how could you obtain potential Certificates of  
14 Naturalization?

15 A If they were given to me by people in possession of them  
16 or by receiving the subject's actual alien file.

17 Q How would you receive the subject or the parents' A File?

18 A I would have to order it. Depending on where it is, it  
19 could take a while to come.

20 Q And just so we're clear on the record, what is an A File  
21 or an Alien File?

22 A An Alien File is a record which is kept by the agency.  
23 Only certain classes of aliens have them, but it's a record of  
24 their entire procedure through their immigration procedures.

25 Q What alien filed did you order in this case?

ANDREN/CROSS/STEPHENS

1 A I ordered the subject, Davino Watson's, A File and I  
2 ordered the Clare Watson and the Hopeton Watson, who I found  
3 in the system.

4 Q And what happened after you ordered the Alien Files?  
5 What did you do next?

6 A I put in an order for an appeal check to ensure that his  
7 current conviction was not on appeal. I updated  
8 some databases, and then I submitted it in a folder up the  
9 chain to the next --

10 (Pause in proceedings.)

11 Q So, Officer, to be clear, plaintiff told you that his  
12 father's name was Hopeton Watson, right?

13 A Correct.

14 Q And through your database search, you located a person  
15 named Hopeton Watson who was from Jamaica and lived in the New  
16 York area, correct?

17 A Correct.

18 MR. MARUTOLLO: No further questions, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. STEPHENS:

21 Q Good afternoon, Mr. Andren.

22 A Excuse me. Good afternoon.

23 Q My name is Tiana Stephens. We met on Friday.

24 A Yes.

25 Q Nice to meet you.

ANDREN/CROSS/STEPHENS

1                    You met with Mr. Davino Watson, correct?

2   A   Yes.

3   Q   Isn't it true that you do not recall that meeting?

4   A   That is true.

5   Q   Do you recall whether or not he told you he was a United  
6   States citizen?

7   A   I know he did not tell me that he was.

8   Q   How would you know if you don't recall meeting him?

9   A   Well, the exhibits that I've gone through, I refreshed my  
10   memory. If he had made a claim to be a U. S. citizen, I would  
11   have noted it.

12   Q   Could you turn to Plaintiff's Exhibit 73, please, sir?

13                   MR. MARUTOLLO: I'm sorry. What number did you say?

14                   MS. STEPHENS: 73.

15                   BY MS. STEPHENS:

16   Q   Do you recognize this document, sir?

17   A   Yes.

18   Q   What is it?

19   A   It's a Record of Deportable Alien.

20   Q   And what's the date on this document, sir?

21   A   Excuse me?

22   Q   What's the date on this document?

23   A   10-9-2007.

24   Q   That is your signature at the bottom of the page, sir?

25   A   Yes, it is.

ANDREN/CROSS/STEPHENS

1 MS. STEPHENS: I would like to move Exhibit 73 into  
2 evidence, please.

3 MR. MARUTOLLO: No objection.

4 THE COURT: Admitted.

5 BY MS. STEPHENS:

6 Q Sir, isn't it true that you wrote down Mr. Watson's  
7 parents' telephone number?

8 A Yes.

9 Q And it's written down beside a statement that says  
10 "telephone number to verify status"?

11 A Yes.

12 Q That would be the status of the inmate, Mr. Davino  
13 Watson, correct?

14 A Yes.

15 Q Okay. Do you recall calling Mr. Davino Watson's parents?

16 A I don't recall calling them. If I had made contact with  
17 his parents, I would have noted it, however.

18 Q Isn't it true -- isn't it true that there is no notation  
19 on PX 73 that you did call Mr. Watson's parents?

20 A There is no notation, correct.

21 Q You requested Mr. Watson's A File, correct?

22 A Yes.

23 Q And ultimately, you obtained Mr. Watson's entire A File?

24 A I never reviewed any A File, no.

25 Q Could you turn to Exhibit PX52, please, sir. Could

ANDREN/CROSS/STEPHENS

1 you -- do you see where it says, "A file received"?

2 A Yes.

3 Q Okay. And it says, "November 1st, 2007," correct?

4 A Yes.

5 Q This would be the A File that you requested, correct,  
6 sir?

7 A I believe it would, yes. It refers to the A File that I  
8 requested.

9 MS. STEPHENS: Okay. I would like to move to admit  
10 PX 52 into evidence.

11 MR. MARUTOLLO: No objection.

12 THE COURT: Admitted.

13 BY MS. STEPHENS:

14 Q Isn't it true that even after your initial interview with  
15 the inmate, you would have the opportunity to follow up with  
16 the inmate?

17 A For a limited amount of time, but yes.

18 Q That's it -- turning your attention to PX Exhibit 101,  
19 Plaintiff's Exhibit 101.

20 Do you recognize this document, sir?

21 A (Perusing document.) Yes, I do.

22 Q What is it?

23 A It's a New York City Department of Probation  
24 Pre-sentencing Investigation.

25 MS. STEPHENS: I'd like to move Plaintiff's Exhibit

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1 101 into evidence, please.

2 MR. MARUTOLLO: No objection, Your Honor.

3 THE COURT: Admitted.

4 BY MS. STEPHENS:

5 Q Isn't it true that a pre-sentence investigation face  
6 sheet is part of the documents that you received for inmates  
7 that you interview?

8 A Most of the time, yes.

9 Q Isn't it true that this Exhibit 101 is for plaintiff,  
10 Davino Watson?

11 A Yes.

12 Q Isn't it true that on the country of birth, it says  
13 "Jamaica"?

14 A Yes.

15 Q And under citizenship, it says "United States"?

16 A That's what it says.

17 THE COURT: Where does that say that on here?

18 MS. STEPHENS: It's on the page marked 1045, sir,  
19 Your Honor, the first page, in the middle of the page?

20 THE COURT: Oh, I see. That's dated 9-18-2007?

21 When would he have received it? Would you inquire?

22 MS. STEPHENS: Sorry, Your Honor?

23 THE COURT: Find out when he received this that says  
24 he claims United States citizenship.

25 BY MS. STEPHENS:

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1 Q Isn't it true that you received this document as part of  
2 the file that you received from the correctional facility  
3 before you interviewed Mr. Watson?

4 A Yes.

5 THE COURT: Well, did you read it?

6 THE WITNESS: Yes, sir.

7 THE COURT: Well, did you see that he claims  
8 citizenship?

9 THE WITNESS: Yes, sir, but probation officers are  
10 not trained in immigration law. They would not know.

11 THE COURT: Well, wasn't that enough to put you on  
12 notice that there was some claim of citizenship, whether it  
13 was valid or not?

14 THE WITNESS: I didn't -- as I didn't take this  
15 report, sir, I don't know -- and I'm not familiar with the  
16 probation officer. I don't know if that is something they  
17 assumed and wrote down.

18 THE COURT: Well, did you read that?

19 THE WITNESS: Yes, sir.

20 THE COURT: What, didn't it alert you that there was  
21 a citizenship claim here, somehow, somewhere?

22 THE WITNESS: Sir, most of the rap sheets and the  
23 criminal histories and probation sheets such as this will have  
24 that, u. S. citizen, regardless of what their actual  
25 citizenship is.

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1                   THE COURT: Are you suggesting that you receive so  
2 many invalid claims that you don't investigate?

3                   THE WITNESS: No, we investigate every one.

4                   THE COURT: Well, why didn't you investigate when  
5 you saw United States citizenship is a claim here?

6                   THE WITNESS: As I said, sir, I don't know where the  
7 probation officer taking this report got that information  
8 from.

9                   THE COURT: Wherever he got it, it says on the  
10 official document that he claims United States citizenship.  
11 That's important, isn't it?

12                  THE WITNESS: That's why we go and interview them.

13                  THE COURT: Well, why didn't you follow up on that?

14                  THE WITNESS: I did.

15                  THE COURT: Did you ask him why you're claiming  
16 United States citizenship?

17                  THE WITNESS: I don't remember if I said asked him  
18 that or not, sir. All I know is that I asked him what country  
19 he's a citizen of and he did not reply with United States.

20                  THE COURT: You remember asking this plaintiff --  
21 how many people do you interview?

22                  THE WITNESS: I ask every person that I interview  
23 what country they're a citizen of, and if they claim to me  
24 that they're a citizen of the United States, I will note it on  
25 my records.

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1                   THE COURT: I see.

2 BY MS. STEPHENS:

3 Q Sir, when you interviewed Mr. Watson, isn't it true --

4                   THE COURT: You do not remember this case, I take  
5 it?

6                   THE WITNESS: Well, reviewing the documents has  
7 refreshed my memory.

8                   THE COURT: You refreshed your memory so that you  
9 recall this particular plaintiff? How many people do you  
10 interview a year?

11                  THE WITNESS: Now, not as many. I have different  
12 duties.

13                  THE COURT: Well then?

14                  THE WITNESS: It would be between six and ten a  
15 week.

16                  THE COURT: What made this person stand out so that  
17 you would recall him physically standing before you and  
18 answering your inquiries?

19                  THE WITNESS: It's not so much that I remember  
20 asking him particularly. It's my procedure.

21                  THE COURT: So you don't remember him particularly.  
22 You are depending on your general procedure?

23                  THE WITNESS: Yes.

24                  THE COURT: And if the papers say United States  
25 citizen, does that alert you to the fact as a general rule,

ANDREN/CROSS/STEPHENNS

1 that you ought to investigate whether he is a United States  
2 citizen?

3 THE WITNESS: Not as much as my findings do, when  
4 you see it in error as many times as I have.

5 THE COURT: And is that because you get so many  
6 false claims that you're kind of hardened, so you don't  
7 bother?

8 THE WITNESS: No. It's not so much of a false  
9 claim. It's the person taking the information down making an  
10 error. If -- I believe on criminal histories, if a -- when  
11 they're being entered in, if nothing is put in, it defaults to  
12 U. S. citizen oftentimes.

13 THE COURT: Why would the city -- why would the  
14 state official put in United States citizenship if he wasn't  
15 so told?

16 THE WITNESS: I can't answer that question. I don't  
17 know the person who took the report.

18 THE COURT: Well, wouldn't you presume that he put  
19 it in because he was told that he claims citizenship?

20 THE WITNESS: I wouldn't -- I wouldn't presume  
21 anything. I would go along with my investigation.

22 THE COURT: How many false claims of citizenship  
23 have you had during your career?

24 THE WITNESS: I couldn't put a number on it.

25 THE COURT: Large number?

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1                   THE WITNESS: I wouldn't say it's an extremely large  
2 number, but over the years, I've investigated a lot of people.

3                   THE COURT: How many people have you investigated  
4 where you thought claimed or might have claimed United States  
5 citizenship?

6                   THE WITNESS: I'm not understanding, sir.

7                   THE COURT: How many cases have you investigated  
8 where there was some statement on some of the papers that you  
9 received before you made inquiry of the person that there  
10 might have been a claim of United States citizenship?

11                  THE WITNESS: I've investigated many people who have  
12 turned out to be United States citizens.

13                  THE COURT: All right.

14 BY MS. STEPHENS:

15 Q       Isn't it true, sir, that you did not do a follow-up  
16 interview with Mr. Watson?

17 A       That's correct.

18 Q       Sir, do you agree that there are no -- that we know there  
19 are two Hopeton Watsons, at least two Hopeton Watsons?

20 A       Yes.

21 Q       Sir, could you please turn to Exhibit 92, Plaintiff's  
22 Exhibit 92?

23 A       (Complies.)

24 Q       Sir, do you recognize this document?

25 A       Yes.

ANDREN/CROSS/STEPHENS

1 Q What is it?

2 A It's the Central Index System database readout.

3 MS. STEPHENS: I would like to move Exhibit 92 into  
4 evidence, please.

5 MR. MARUTOLLO: No objection.

6 THE COURT: It's admitted.

7 BY MS. STEPHENS:

8 Q This is Mr. Hopeton Rolando Watson's printout, correct,  
9 sir?

10 A Yes.

11 Q And sir, isn't it true that if you had entered a Hopeton  
12 Watson, this printout would have turned up?

13 A Not necessarily, no.

14 Q When you interviewed Mr. Watson, isn't it true that you  
15 didn't ask him his father's middle name?

16 A I asked for his father's name. That's what I asked him.

17 Q Okay. And sir, isn't it true that you didn't question  
18 plaintiff regarding his father's date of birth or Social  
19 Security Number?

20 A I did ask his date of birth. I ask everybody that I  
21 interview, when I ask about their parent information, I ask  
22 their parent's date of birth.

23 Q Okay, sir. I would like to turn you back to Exhibit 72,  
24 I believe. Let me just make sure here -- 73, sorry.

25 THE COURT: Seventy-three?

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1 MS. STEPHENS: 73, Your Honor.

2 BY MS. STEPHENS:

3 Q And sir, I ask you to direct your attention back to the  
4 telephone number where -- of parents, correct?

5 A Yes.

6 Q To verify status, and there's no notation as to whether  
7 or not you called these parents, correct?

8 A That's correct.

9 Q Okay. So sir, isn't it true that you didn't follow your  
10 usual protocol and made a notation on this page, because there  
11 isn't any notation on the page?

12 A As I stated before, I make a notation if I have spoken  
13 with the parents -- with the subject's parent.

14 Q Okay.

15 THE COURT: Well, I don't understand. He gave you  
16 the number 718-377-7027, right?

17 THE WITNESS: Yes.

18 THE COURT: Did you call that number?

19 THE WITNESS: I don't remember if I called it, but  
20 if I had spoken to his parents, I would have put the time and  
21 date that I spoke with them.

22 THE COURT: So as far as your recollection and your  
23 pattern and practice, you never spoke to him?

24 THE WITNESS: Correct.

25 THE COURT: But you don't know whether you tried and

LISA SCHMID, CCR, RMR

ANDREN/CROSS/STEPHENS

1 they didn't answer, right?

2 THE WITNESS: Correct.

3 BY MS. STEPHENS:

4 Q Sir, returning to Exhibit 73, under the section where it  
5 says "Father's name, nationality and address if known." It  
6 has age and date of birth sections, as well.

7 A Yes.

8 Q Isn't it true that both of those --

9 THE COURT: I'm sorry. I'm not following you.

10 Where is this on the document. This is 001032.

11 MS. STEPHENS: Correct, Your Honor. In the middle  
12 of the page, there's a section that says "Father's name and  
13 nationality and address, if known."

14 THE COURT: Okay.

15 BY MS. STEPHENS:

16 Q And sir, isn't it true that on this page where it says  
17 age and date of birth, under the father's name and  
18 nationality, address if known section, both are blank, sir.

19 A Yes, because nothing was given to me.

20 Q And isn't it true, sir, that under the section for  
21 mother's present maiden name, nationality and address if  
22 known, under where it says age and date of birth, both are  
23 also blank, sir?

24 A Yes, because nothing was given to me.

25 Q Okay. Sir, on direct --

ANDREN/CROSS/STEPHENS

1                   THE COURT: Excuse me. Is this document shown to  
2 the defendant -- to the plaintiff in this case?

3                   THE WITNESS: Not by me.

4                   THE COURT: Okay. So this is filled out by you, but  
5 it's internal records, right?

6                   THE WITNESS: It would -- I believe it would end up  
7 being his Alien File. So if at some point, he was in an  
8 immigration proceedings, it could be shown to him, but I would  
9 not show this document to him.

10                  THE COURT: Well, would you in the course of your  
11 normal inquiry ask age and date of birth?

12                  THE WITNESS: Yes.

13                  THE COURT: Why wasn't it filled out here?

14                  THE WITNESS: Because it wasn't -- it wasn't given  
15 to me.

16                  THE COURT: But you asked for it?

17                  THE WITNESS: Yes.

18                  THE COURT: Based on your general practice, but not  
19 your recollection?

20                  THE WITNESS: Based on ever other interview that  
21 I've done where I need to find information about the parents,  
22 yes, sir.

23                  THE COURT: Well, didn't it appear peculiar, this  
24 fellow standing before you and you ask him what's the age of  
25 your father and he said I don't know? Where is your father

ANDREN/CROSS/STEPHENS

1 born and he says I don't know? When was your mother born?  
2 What's her age? I don't know. That's strange.

3 THE WITNESS: It's extremely common in the criminal  
4 justice system.

5 THE COURT: Isn't it?

6 THE WITNESS: In the prison system, yes, sir.

7 THE COURT: Well, is this a criminal justice  
8 document?

9 THE WITNESS: This is an immigration document.

10 THE COURT: Not a criminal document?

11 THE WITNESS: That's correct.

12 THE COURT: So what does the criminal justice system  
13 have to do with it?

14 THE WITNESS: Because that's where I encountered  
15 him. I encountered him in a state prison. It's very common  
16 among inmates in state prison to not know much about their  
17 parents at all. I would say it's more common than not.

18 THE COURT: Okay. But not seems to me where they  
19 have a telephone number that they can give, it shows a  
20 contact. Many of these cases, the parent has abandoned them,  
21 but here, they have a telephone number. Very strange.

22 Admitted.

23 BY MS. STEPHENS:

24 Q Sir, it's your testimony that Mr. Davino Watson refused  
25 to give you his parents' age?

ANDREN/CROSS/STEPHENS

1 A I wouldn't say refused. He just -- he didn't.

2 (Continued on the next page.)

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ANDREN/CROSS/STEPHENS

1       CROSS-EXAMINATION (Cont'd.)

2       BY MS. STEPHENS:

3       Q     Okay. Sir, did you ask Mr. Watson to estimate his  
4       father's age?

5                   THE COURT: I couldn't understand your question.

6                   MS. STEPHENS: I'm asking if he asked Mr. Watson to  
7       estimate his parents' age.

8                   THE COURT: Oh.

9       A     In cases where they don't know the date of birth I'll  
10      usually ask if they know -- I will ask if they know year or  
11      month and the day or about how old they are and I would note  
12      that information if given.

13      Q     Isn't it true that you can you put estimates of years  
14      into the CIS system?

15      A     Yes, you can go by nine years I believe.

16      Q     Sir, turning back to Exhibit 101 I believe -- excuse me,  
17      Exhibit 92, I'm sorry.

18                   MS. STEPHENS: Your Honor, Exhibit 92.

19      Q     Sir, isn't it true that screen shots from the CIS index  
20      include naturalization dates?

21      A     They do sometimes, yes.

22      Q     And sir, do you see the naturalization date for Hopeton  
23      Ulando Watson on this Exhibit 92?

24      A     Yes.

25      Q     And it's September 17, 2002, correct?

HOLLY DRISCOLL, CSR

ANDREN/CROSS/STEPHENS

1 A Yes.

2 MS. STEPHENS: Excuse me, Your Honor.

3 (Pause.)

4 THE COURT: Did you offer 92 in evidence?

5 MS. STEPHENS: Yes.

6 THE CLERK: It's already been admitted.

7 MS. STEPHENS: Yes.

8 Q Sir, isn't it true that there were protocols in place in  
9 2007, ICE protocol in place regarding when an inmate claimed  
10 U.S. citizenship?

11 A Yes, I believe so, yes.

12 Q Sir, could you turn to exhibits 55 to 58 please.

13 MR. MARUTOLLO: Your Honor, we would object to these  
14 exhibits, 55 through 58. They were the source of the motion  
15 in limine, Your Honor, that we filed.

16 These exhibits are internal ICE memoranda and we  
17 argued that there's no basis to have them admitted into  
18 evidence because, first, again we argue that there's no  
19 private analog under New York law for the plaintiff's  
20 negligence claims, but also that the United States would be  
21 deeply prejudiced by the admission of these exhibits because  
22 the plaintiff intends to use these exhibits to create a  
23 standard of care based entirely on internal agency documents.  
24 These are not regulations, they're not statutes, anything  
25 along those lines, and, further, this particular witness --

HOLLY DRISCOLL, CSR

ANDREN/CROSS/STEPHENS

1 these exhibits all postdate anything that the witness had done  
2 in the case, the earliest one is dated May 23rd, 2008.

3 THE COURT: Is that true?

4 MS. STEPHENS: Yes, Your Honor, that is true.

5 THE COURT: Well, then why does it come in at this  
6 stage against this witness?

7 MS. STEPHENS: Your Honor, just as a whole, in his  
8 deposition on Friday the witness did admit that these memos  
9 establish a continuing obligation.

10 THE COURT: Not at the time.

11 The objection is sustained on that ground, that they  
12 were not in operation at that time.

13 MR. MARUTOLLO: Your Honor, we just have very short  
14 redirect examination.

15 MR. FLESSNER: Just give us a second.

16 MR. MARUTOLLO: Okay.

17 (Pause.)

18 Q Sir, with respect to claims of U.S. citizenship by  
19 inmates, there was a protocol in place in 2007, correct?

20 A I believe we had an internal office policy.

21 Q Isn't it true that you did not follow that internal  
22 office policy with respect to Mr. Davino Watson?

23 THE COURT: Where is the policy?

24 MS. STEPHENS: We don't have that policy.

25 THE COURT: Well, then I don't want it.

HOLLY DRISCOLL, CSR

ANDREN/REDIRECT/MARUTOLLO

1 MS. STEPHENS: I have no further questions, Your  
2 Honor.

3 THE COURT: Redirect.

4 MR. MARUTOLLO: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MARUTOLLO:

7 Q Mr. Andren, would your investigation have been any  
8 different during the meeting you had on October 9, 2007 if  
9 plaintiff had said he was a U.S. citizen, would you have done  
10 anything different upon learning that information?

11 A At that stage, no.

12 Q Why not?

13 A Because that's the procedure, I present my -- I summarize  
14 my findings and present them to a supervisor. When everything  
15 that has been ordered, the Alien files and everything has been  
16 ordered comes in, it's reviewed and then determinations are  
17 made.

18 Q And if there is an indication on a presentencing report  
19 from the Department of Probation that indicates that an  
20 individual is a United States citizen, does that impact the  
21 steps that you take in going about your investigation?

22 A Not at all.

23 Q And just to be clear, your role in this process is after  
24 the interview you are to order the A-Files, is that right, is  
25 that correct?

PROCEEDINGS

1 A Yes.

2 Q You then pass along that preliminary information to  
3 someone else, right?

4 A Yes.

5 Q Do you know who got this case after you were completed  
6 with your portion of this investigation?

7 A I believe, according to the document we reviewed earlier,  
8 it was Supervisor Spoor.

9 Q Do you happen to know if this case was ever transferred  
10 at some point to Officer Estrada?

11 A It was at one point.

12 Q But your role was to just conduct the interview and order  
13 the A-Files?

14 A Order the A-Files and appeal check and things of that  
15 matter, that's correct.

16 MR. MARUTOLLO: Thank you, Your Honor.

17 Thank you.

18 No further questions.

19 THE COURT: You may step down.

20 MS. STEPHENS: Your Honor, I have one more question.

21 THE COURT: No, you don't.

22 Step down, sir.

23 THE WITNESS: Thank you.

24 (Witness steps down.)

25 THE COURT: I have a problem because I'm trying a

PROCEEDINGS

1 non-jury case beginning tomorrow which is quite troublesome  
2 and I don't think I can do it all in one day. I'd rather than  
3 break you up bring you in Thursday and Friday, if that's more  
4 convenient, rather than bring you in Wednesday, go back to the  
5 other one and then bring you in Friday.

6           What would you prefer?

7           MR. MARUTOLLO: May I have a moment, Your Honor?

8           THE COURT: Yes. I think you're better off coming  
9 in Thursday. It's the nature of a non-jury case. If it were  
10 a jury case, I try them, of course, back-to-back.

11           (Pause.)

12           MR. MARUTOLLO: That's fine, Your Honor.

13           MR. FLESSNER: It's up to you, Your Honor.

14           THE COURT: I think probably it would be better  
15 because then I can finish this case and we'll go over  
16 Thursday, Friday and, if necessary, Monday. I mean I can't  
17 see that it will be more than two days.

18           (Pause while the clerk confers with the Court.)

19           THE COURT: All right then, we'll go Wednesday.  
20 I'll try to finish that tomorrow if I can. We'll go  
21 Wednesday. Come in ten o'clock Wednesday.

22           MR. FLESSNER: Okay.

23           MR. MARUTOLLO: Thank you.

24           THE COURT: Try to stipulate as much as you can,  
25 it's a non-jury case. Thank you.

PROCEEDINGS

1 MR. CHO: Thank you, Your Honor.

2 MR. MARUTOLLO: Thank you, Your Honor.

3 THE COURT: Thank you.

4 Good night.

5 (Time noted: 3:45 p.m.)

6 (Proceedings adjourned as above set forth.)

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